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IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
DADE COUNTY, FLORIDA

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HOWARD A. ENGLE, M.D., et al,  
Plaintiffs,

-against-

RJ REYNOLDS TOBACCO COMPANY, et al,  
Defendants.

Case No.: 94-08273 CA (22)

Florida Bar No.: 142163

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200 Park Avenue  
New York, New York

May 10, 2000  
10:00 A.M.

DEPOSITION of PHILIP MORRIS, INC.,  
a Defendant, by MICHAEL SZYMANCZYK, taken on  
behalf of the Plaintiffs, held pursuant to Notice,  
before a Notary Public of the State of New York.

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0004

1 M. Szymanczyk  
2 M I C H A E L S Z Y M A N C Z Y K, having first  
3 been duly sworn by a Notary Public of the State of  
4 New York, was examined and testified as follows:  
5 EXAMINATION BY  
6 MR. ROSENBLATT:  
7 Q. Please state your name and your  
8 address.  
9 A. Michael Szymanczyk, 120 Park  
10 Avenue, New York, New York.  
11 Q. What is your position with Philip  
12 Morris?  
13 A. I'm the president and chief  
14 executive officer of Phillip Morris Incorporated  
15 also known as Phillip Morris U.S.A.  
16 Q. Those two names are used  
17 interchangeably?  
18 A. Yes.  
19 Q. What's the point of two different  
20 names?  
21 A. I don't know that there is a point.

22 Q. Let me go through your educational  
23 background.  
24 A. Okay.  
25 Q. Where are you from originally?  
0005  
1 M. Szymanczyk  
2 A. I grew up in Lansing, Illinois.  
3 Q. You went to high school there?  
4 A. I did.  
5 Q. What about college?  
6 A. I went to college at Indiana  
7 University.  
8 Q. In Bloomington?  
9 A. Bloomington.  
10 Q. What was your major?  
11 A. BS in finance.  
12 Q. Bachelor of Science in Finance?  
13 A. Yes.  
14 Q. From Indiana University?  
15 A. Yes.  
16 Q. What year did you graduate?  
17 A. I graduated in June of 1971.  
18 Q. In terms of additional formal  
19 education, if any, what did you do after that?  
20 A. I don't have any additional degrees  
21 beyond that.  
22 Q. Did you have any additional  
23 schooling beyond that even in the sense maybe  
24 starting a program but not completing it?  
25 A. No.

0006  
1 M. Szymanczyk  
2 Q. So what did you do work wise or  
3 from any other standpoint after you obtained your  
4 BS in Finance from Indiana University?  
5 A. Well, when I graduated from Indiana  
6 I went to work for the Proctor & Gamble Company.  
7 Q. That would have been in '71 you  
8 started out with them?  
9 A. I started in June of 1971.  
10 Q. Located where?  
11 A. The company is located,  
12 headquartered in Cincinnati Ohio. My location was  
13 Louisville, Kentucky.  
14 Q. How long did you work for Proctor &  
15 Gamble?  
16 A. About 17 years.  
17 Q. So will you now trace for me, if  
18 you would, the position you started out with and  
19 then I'm sure you assumed different positions up  
20 until the time you left.  
21 A. Well, I'm not sure I can recite  
22 them all, but I will try to give you a general  
23 background.  
24 Q. That's fine.  
25 A. I started as a sales representative

0007  
1 M. Szymanczyk  
2 in the bar soap and household cleaning products  
3 division of Proctor & Gamble. I progressed  
4 through a series of line management  
5 responsibilities out in what's called the field  
6 organization and ultimately had some training

7 assignments and staff assignments in Cincinnati  
8 during the course of that progression. Ultimately  
9 I became a general manager of part of the  
10 company's business and that was the position from  
11 which I left.

12 Q. Would it be accurate to say as you  
13 look back on your whole 17-year career at Proctor  
14 & Gamble that the focus was sales or was your  
15 focus -- I'm trying to understand what you were  
16 mostly concerned with.

17 A. I would say the majority of my time  
18 and background was in sales and organizational  
19 management and then ultimately in general  
20 management position.

21 Q. When you left Proctor & Gamble,  
22 approximately how many employees did they have?

23 A. I'm not sure I know the answer to  
24 that. It's a large company with a lot of  
25 employees. I'm not sure I know the answer.

0008

1 M. Szymanczyk

2 Q. What are the five or six leading  
3 products of Proctor & Gamble?

4 A. Proctor & Gamble makes a range of  
5 products in different categories, Tide detergents,  
6 Folgers coffee, Pampers disposable diapers, Scope  
7 mouthwash, Crest toothpaste, Ivory bar soap.

8 Q. I thought Ivory.

9 A. A range of well-known consumer  
10 products.

11 Q. What food products, if any?

12 A. Crisco shortening, Pringles potato  
13 chips. The time I was there Duncan Hines cake  
14 mixes, Jif peanut butter.

15 Q. Did you specialize in any  
16 particular product?

17 A. I was in the bar soap and household  
18 cleaning products business. I was in the coffee  
19 business. I was in the beverage business.  
20 Proctor & Gamble for a time entered the soft drink  
21 business and I was involved in that for a period  
22 of time. I was involved in the orange juice  
23 business for a period of time during my career  
24 directly and then indirectly. In some of the  
25 staff assignments I had I was involved in some of

0009

1 M. Szymanczyk

2 the business.

3 Q. What was the soft drink?

4 A. There was a point in time where  
5 Proctor & Gamble bought a company called Orange  
6 Crush and two Coca-Cola bottling plants and was  
7 examining that business as a potential growth  
8 opportunity.

9 Q. In terms of your undergraduate  
10 degree in finance, were you at all involved in  
11 that aspect of the Proctor & Gamble business?

12 A. No.

13 Q. How did you originally get the  
14 job? Did you apply for it or did they come around  
15 to the college?

16 A. They recruited at Indiana  
17 University and I interviewed them and eventually

18 was offered an opportunity.  
19 Q. Your title when you left Proctor &  
20 Gamble was what?  
21 A. I was the category general manager  
22 for the bar soap business.  
23 Q. What was your salary when you left?  
24 A. Mr. Rosenblatt, I don't remember.  
25 That's a long time ago.

0010

1 M. Szymanczyk  
2 Q. Was the figure so inconsequential  
3 that you have forgotten?  
4 A. No, it was a pretty good job.  
5 Q. So you left in what year, about  
6 '87, '88?  
7 A. I left December 31, 1987.  
8 Q. Why did you leave?  
9 A. Because I decided to take a job  
10 with Kraft Foods.  
11 Q. At that time Kraft Foods had no  
12 connection to Philip Morris?  
13 A. That is correct.  
14 Q. That was the name of the company,  
15 Kraft Foods?  
16 A. Well, I won't swear that that was  
17 exactly the name. The name changed over time,  
18 Dart Kraft, but I knew of it as Kraft.  
19 Q. Did you leave Proctor & Gamble for  
20 Kraft Foods for higher pay or were there other  
21 reasons?  
22 A. No, there were a series of  
23 reasons. One was because I got interested in it.  
24 I was contacted by them and I was interested in  
25 what they wanted me to do and I had only worked

0011

1 M. Szymanczyk  
2 for one company in my career, Proctor & Gamble,  
3 and I was, I guess, at an age I was kind of  
4 interested in exploring business further. I liked  
5 the people at Kraft, so I thought it was a good  
6 opportunity for me to pursue. It was in Chicago  
7 and both my wife and I were from Chicago  
8 originally so that was another attractive option.  
9 Those, I think, were the reasons we decided to go.  
10 Q. What did they want you to do?  
11 A. They really wanted me to come in as  
12 vice president of sales and help them rebuild  
13 their sales organization. The business they felt  
14 changed and the organization really had some  
15 opportunities to grow and develop further and I  
16 had significant background in that. I had done  
17 that at Proctor & Gamble, so they were interested  
18 in having me do that.  
19 Q. Do you remember the salary you  
20 began with at Kraft or approximately the range?  
21 A. No, it was more than I was making  
22 at Proctor & Gamble. As a general course of  
23 things when somebody hires you away from another  
24 company, they tend to pay you a bit better, but  
25 those things all kind of wash out over time, so I

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1 M. Szymanczyk  
2 don't really remember the exact amount.

3 Q. At that time when you first went to  
4 work for Kraft, what would you say was five or six  
5 of their major products?  
6 A. Kraft makes Miracle Whip salad  
7 dressing, Kraft macaroni & cheese, all the Kraft  
8 cheeses, lineup of products, Kraft dinner  
9 products. It's an assortment of different and  
10 various food products, refrigerated segment and  
11 the dry grocery segment of supermarkets.  
12 Q. How long were you with Kraft?  
13 A. I worked for Kraft for just about  
14 under two years.  
15 Q. What was your focus at Kraft, what  
16 you told me about already?  
17 A. Yes.  
18 Q. Any particular product that you  
19 focused in on?  
20 A. No, really I was focusing on the  
21 sales organization.  
22 Q. The objective of any sales  
23 organization is to increase sales and that's the  
24 bottom line in business?  
25 A. No, not necessarily. It depends on

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1 M. Szymanczyk  
2 the categories. You have different objectives in  
3 different categories, so I wouldn't say that was a  
4 unilateral statement.  
5 Q. Why were you with them for such a  
6 short period of time, you got offered a better  
7 job?  
8 A. Well, I accomplished what I set out  
9 to do, which was to reorganize their sales  
10 organization.  
11 I was offered a unique or what I  
12 thought was a unique opportunity because both of  
13 my company experiences were large company  
14 experiences. At that point I was offered an  
15 opportunity go work for a small, privately held  
16 business that was seeking to develop itself to the  
17 point that it could do an initial public offering  
18 and it was a senior position in that company to  
19 really participate at a high level in  
20 accomplishing that. That was certainly a totally  
21 new environment for me and totally different kind  
22 of business prospective. I decided it was  
23 something that at that time in my life and my age  
24 at that point that if I was ever going to do it, I  
25 should do it then, so I decided to take that

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1 M. Szymanczyk  
2 opportunity and go do it.  
3 Q. As I'm hearing your testimony, when  
4 you left Proctor & Gamble, when you left Kraft, it  
5 was not because you were unhappy with the  
6 situation, but it was you basically left for a  
7 better opportunity, what you perceived as a better  
8 opportunity?  
9 A. What I perceived as a more  
10 interesting opportunity, something that would be  
11 different.  
12 Q. What was the name of that company?  
13 A. The name of the company was Swift

14 Eckrich.  
15 Q. Where were they based?  
16 A. They were based in Oak Brook,  
17 Illinois.  
18 Q. Swift Eckrich was in the business  
19 of doing what?  
20 A. It is a processed meat business.  
21 Q. That doesn't mean much to me so  
22 explain it.  
23 A. Hot dogs, lunch meat. They're  
24 probably best known for their frozen turkey  
25 business, the Butter Ball turkey, Swift Brown and  
0015

1 M. Szymanczyk  
2 Serve sausage, deli meats. It's a business that  
3 does business with the grocery industry obviously  
4 in the area of processed meats.  
5 Q. How long were you with Swift  
6 Eckrich?  
7 A. About a year.  
8 Q. You were making more money at Swift  
9 Eckrich than you did at Kraft or not?  
10 A. Probably a bit more, yes.  
11 Q. When you went with Swift Eckrich, I  
12 assume you didn't intend to be with them only a  
13 year?  
14 A. Well, I knew that it was going to  
15 be a somewhat unpredictable circumstance because  
16 the purpose was to in fact prepare the business  
17 for sale and you never quite know what the outcome  
18 is going to be when you do that. But I  
19 anticipated at that point, I think we all  
20 anticipated there, that it would take us about  
21 three years to do that and it didn't. It took us  
22 about a year to do that, so we accomplished it  
23 more quickly than we originally expected to.  
24 Q. Having accomplished it, you had no  
25 further interest in being with the company?  
0016

1 M. Szymanczyk  
2 A. Well, we were likely expecting that  
3 we would do an initial public offering and we  
4 didn't. We sold the business instead to a large  
5 commodity business and a package goods business  
6 called Conagra, which is headquartered in Omaha,  
7 Nebraska, and so once it was sold, I made the  
8 determination that my wife and I didn't  
9 particularly want to move to Omaha. I had some  
10 other opportunities and so I decided not to  
11 remain. That was my choice. At that point in  
12 time when you make a sale like that, I decided I  
13 would stay through what's called due diligence,  
14 the completion of the sale. I told them that and  
15 that I was going to pursue something else after  
16 that.  
17 Q. So what time frame are we talking  
18 about by the time you leave Swift Eckrich?  
19 A. I left them in the fall of 1990, so  
20 the autumn of 1990.  
21 Q. What did you do after that?  
22 A. That was when I came to work for  
23 Philip Morris U.S.A.  
24 Q. When you first went to work for

25 Philip Morris U.S.A. in 1990, what was your first  
0017

1 M. Szymanczyk

2 position?

3 A. Senior vice president of sales.

4 Q. So as I'm hearing you in terms of  
5 looking at your work history, basically you have  
6 always been involved in sales at least up until  
7 1990?

8 A. I have had a sales background. I  
9 have done other things within these companies, but  
10 certainly I have had a sales background in each of  
11 companies that I worked for, yes.

12 Q. In 1990 what was the main  
13 responsibility of you in the position of senior  
14 vice president for sales?

15 A. Well, it was to lead a large sales  
16 organization of roughly 3,000 people in what was  
17 then a changing business environment and to see  
18 that that organization developed the necessary  
19 skills and was structured properly and had the  
20 necessary tools to be able to operate effectively  
21 in that environment.

22 Q. How long were you senior vice  
23 president of sales?

24 A. Let's see, I was senior vice  
25 president of sales a little over four years.

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1 M. Szymanczyk

2 Q. What was your next position?

3 A. Executive vice president marketing  
4 and sales.

5 Q. What was your salary when you took  
6 that job?

7 A. I don't remember. I'm sorry.

8 Q. A lot less than you're making now?

9 A. It would be less than I'm making  
10 now.

11 Q. A lot less?

12 A. Yes, I would say it was.

13 Q. A couple of hundred thousand less?

14 A. You bet, sure, absolutely.

15 Q. How long were you executive vice  
16 president for marketing and sales?

17 A. It was two and a half years.

18 Q. So that takes us to what, '97?

19 A. It takes us to about June of 1997.

20 Q. In June of 1997 what happened?

21 A. I became chief operating officer of  
22 Philip Morris U.S.A.

23 Q. Is that the equivalent of CEO?

24 A. No.

25 Q. Who was the CEO when you were chief

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1 M. Szymanczyk

2 operating officer?

3 A. Jim Morgan.

4 Q. How do those roles differ at Philip  
5 Morris, chief operating officer as opposed to CEO?

6 A. Well, my responsibility as chief  
7 operating officer was sales, marketing and then  
8 what we called operation or manufacturing of  
9 product development facilities. The CEO has a



10 responsibility for the total company, so I  
11 reported to the CEO.  
12 Q. In terms of the chain of command,  
13 is the chief operating officer the number two guy  
14 in the company after the CEO?  
15 A. I think that's a fair assessment.  
16 Q. When did you become CEO?  
17 A. November 1, 1997.  
18 Q. So you were chief operating officer  
19 for a relatively brief period of time?  
20 A. For about six months.  
21 Q. You went directly from that job to  
22 your present position?  
23 A. Correct.  
24 Q. Are you planning on coming to Miami  
25 to testify live in this case?

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1 M. Szymanczyk  
2 A. I am.  
3 Q. What are you going to testify  
4 about?  
5 A. Well, I'm going to testify based on  
6 what occurs in this phase of the trial based on  
7 the questions that Mr. Webb asks me relevant to  
8 what goes on in that trial. Some of that is to be  
9 determined I think.  
10 Q. What is your understanding of the  
11 issues now, the areas about which you will be  
12 questioned, if you have any understanding?  
13 A. Well, there will be areas that I'm  
14 sure will come up in the first part of this trial,  
15 but I intend on talking about how we run the  
16 business under my leadership and what some of the  
17 things are that we're doing in terms of the  
18 operation of the business today.  
19 Q. Are you going to talk about the  
20 value of the company, what the company can afford  
21 to pay in terms of a punitive damage award?  
22 A. I expect that I will be discussing  
23 what the effect or punitive award would be on the  
24 company, yes.  
25 Q. Do you think you will also be

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1 M. Szymanczyk  
2 discussing what the company is worth, what its  
3 value is?  
4 A. If that's an area that I'm asked  
5 questions on, absolutely, I think that I probably  
6 will.  
7 Q. Does Philip Morris U.S.A. or Philip  
8 Morris, Inc. have in its employ a Ph.D. in  
9 economics?  
10 A. I don't know.  
11 Q. Have about a Ph.D. in finance?  
12 A. I don't know that either.  
13 Q. If you wanted to have a discussion  
14 or issues came up on very complex economic  
15 financial matters, who's the guy in the company or  
16 the woman in the company that you would go to?  
17 A. Well, if I was going to get into  
18 specific financial matters, I would ask my senior  
19 vice president of finance the question. That's  
20 where I would get the numbers.

21 Q. Who is that individual?  
22 A. His name is Harry Steele.  
23 Q. As far as you know, is it  
24 contemplated that Mr. Steele is going to testify  
25 during this phase?  
0022  
1 M. Szymanczyk  
2 A. As far as I know, no, that isn't  
3 contemplated.  
4 Q. As far as you know is any outside  
5 economist or finance person going to testify on  
6 behalf of Philip Morris?  
7 A. I believe that's up to  
8 Mr. Webb, so I would not know at this point who  
9 was going to testify.  
10 Q. At this point do you see yourself  
11 as the primary witness on the finances and the  
12 value of Philip Morris or is there some other  
13 witness who's going to focus in on that?  
14 A. I see myself as the primary witness  
15 on behalf of Philip Morris. I can't answer the  
16 question as to whether or not there will be  
17 another witness.  
18 Q. Are you a smoker?  
19 A. I'm not a regular smoker. I do  
20 smoke occasionally.  
21 Q. Were you ever a regular smoker?  
22 A. There have been times in my life  
23 where I would say that I was a regular smoker,  
24 yes.  
25 Q. What's your definition of a being a

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1 M. Szymanczyk  
2 regular smoker?  
3 A. Where I would smoke pretty much  
4 every week. I would smoke most of the week, every  
5 week.  
6 Q. At what age did you become a  
7 smoker, regular or not regular?  
8 A. The first time I ever smoked was  
9 when I was in college so I was probably about 20,  
10 but really the first time I really smoked with any  
11 regularity was in my late 20s, so the latter part  
12 of my 20s and early 30s. There is a period of  
13 time that I would smoke with reasonable  
14 regularity.  
15 Q. During that time frame what brand  
16 were you smoking or brands?  
17 A. For most of that time frame I think  
18 I smoked a brand called Barkely.  
19 Q. Manufactured by who?  
20 A. I think it's being manufactured by  
21 Brown & Williamson today. I don't know who it was  
22 being manufactured by back then.  
23 Q. Was there ever a period of time in  
24 your smoking career, for want of a better term,  
25 when you were a daily pack a day smoker?

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1 M. Szymanczyk  
2 A. Pack a day every day?  
3 Q. Yes.  
4 A. No.  
5 Q. Was there ever a time when you were

6 a half-a-pack-a-day smoker?  
7 A. I would say there was a time where  
8 I would average during the course of the week a  
9 pack.  
10 Q. A day?  
11 A. A day, but I might not smoke every  
12 day.  
13 Q. I think I'm understanding you, but  
14 even during the period of time when you would  
15 smoke a half a pack a day, there would still be  
16 days that would go by that you wouldn't smoke at  
17 all?  
18 A. That is correct.  
19 Q. In the last five years, what kind  
20 of smoker have you been, an irregular smoker?  
21 A. I would say I'm not a regular  
22 smoker. There have been periods in the last five  
23 years when I would smoke as I described earlier.  
24 But I smoke sometimes and there are periods of  
25 time, months and weeks and so on, that I don't

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1 M. Szymanczyk  
2 smoke at all, but I like to smoke sometimes and  
3 do.  
4 Q. If you look at the last month or  
5 two, in terms of your smoking in the last month or  
6 two, have you ever smoked as much as ten  
7 cigarettes in a given day?  
8 A. Sure.  
9 Q. And then you have gone several days  
10 without smoking at all?  
11 A. Absolutely.  
12 Q. When you do smoke, what brand do  
13 you smoke?  
14 A. Usually I smoke today Marlboro  
15 Ultra Lights.  
16 Q. Do you smoke ultra lights because  
17 you like the flavor or do you smoke ultra lights  
18 because you think they are safer?  
19 A. No, I smoke them because they are  
20 not real strong and I like that. I find some  
21 other products too strong for my taste.  
22 Q. You don't think ultra lights are  
23 any safer than the Marlboro that has the highest  
24 tar ratio, do you?  
25 A. I think smoking is bad for your

0026

1 M. Szymanczyk  
2 health so, no, I would not suggest they are safer.  
3 Q. How long have you thought that?  
4 A. All through the time I've grown up.  
5 Q. So why smoke at all believing  
6 that? Why smoke at all if you believe smoking is  
7 bad for your health? Why would you smoke at all  
8 since obviously you have the discretion to not  
9 smoke at all because you have done that?  
10 A. Well, because sometimes I like to  
11 smoke.  
12 Q. You're a gambler?  
13 A. There are other things that I do  
14 that I know carry with them some risk, but I like  
15 to do them so I try to do them in moderation.  
16 Q. Well, what other products or

17 activities would you say the same thing about that  
18 you say cigarettes about, that they are bad for  
19 your health?

20 A. Well, I ride motorcycles.

21 Q. Well, that's only bad for your  
22 health if you have an accident.

23 A. But certainly the odds are higher.

24 Q. But cigarettes smoke is bad for  
25 your health if you just use it normally.

0027

1 M. Szymanczyk

2 A. My point is there is risky  
3 behavior.

4 Q. Are you a risk-taker?

5 A. I think I'm a calculated  
6 risk-taker.

7 Q. And you calculate that you lower  
8 your risk by being an irregular smoker as opposed  
9 to a regular smoker; is that fair?

10 A. I suppose that might be an outcome,  
11 but frankly I just smoke the way I want to smoke  
12 not because I am trying to calculate the risk.

13 Q. Does your wife smoke?

14 A. No.

15 Q. Ever?

16 A. No.

17 Q. Does she let you smoke in the  
18 house, in the car?

19 A. I don't smoke in the house.

20 Q. Do you smoke in the car?

21 A. No.

22 Q. Do you have children?

23 A. Yes.

24 Q. What are their ages?

25 A. Let's see, 24, 22 and 16.

0028

1 M. Szymanczyk

2 Q. Boys, girls?

3 A. They are all three boys.

4 Q. Do any of them smoke?

5 A. My oldest son smokes.

6 Q. What does your older do, the  
7 24-year-old?

8 A. He is in college.

9 Q. What's his major?

10 A. He is majoring in communication.

11 Q. The other two boys do not smoke?

12 A. No.

13 Q. What has your position been as a  
14 parent with respect to the issue of smoking? Did  
15 you prohibit it for a period of time?

16 A. Absolutely.

17 Q. When did you stop prohibiting it or  
18 is the 24-year-old smoking against your will?

19 A. He doesn't live in my household and  
20 he is an adult so he pretty much --

21 Q. Who's paying the tuition for this  
22 24-year-old, him or you?

23 A. I pay it.

24 Q. You got some cards, some pretty big  
25 cards.

0029

1 M. Szymanczyk

2 A. Right.  
3 Q. So he's been a smoker for how long?  
4 A. He started when he was in college.  
5 Q. Did you say it's okay, it's an  
6 adult decision?  
7 A. No, I told him I think it's bad for  
8 his health and that he should give it up.  
9 Q. How heavy a smoker is he?  
10 A. I don't know. I can't answer that  
11 question.  
12 Q. What's your perception, do you  
13 think he is a fairly heavy smoker?  
14 A. I do not.  
15 Q. What was his response to you when  
16 you told him that? Did he say to you you're  
17 selling the stuff, you are the number one company  
18 and you're telling me it's bad for my health and  
19 you're selling it?  
20 A. No.  
21 Q. He didn't say that?  
22 A. No.  
23 Q. What's your response to that?  
24 That's what I would have said to you, you're  
25 telling me not to smoke, it's bad for my health

0030

1 M. Szymanczyk  
2 and you have got the number one product in the  
3 world, Marlboro, and you're selling it like crazy  
4 every day, you go into the office, your objective  
5 is to increase sales of this product that's bad  
6 for everyone's health.  
7 MR. WEBB: Object to the form of  
8 the question.  
9 Q. What would your answer be to that?  
10 A. You didn't ask me.  
11 Q. If hypothetically he had, what  
12 would your answer be?  
13 A. My answer would be it has nothing  
14 to do with what I do, it's bad for your health and  
15 you should be aware of that. It's ultimately his  
16 decision. I have told him that. I told him he  
17 really needs to educate himself and make sure he's  
18 making a good decision.  
19 Q. The other two boys simply accepted  
20 your advice?  
21 A. So far.  
22 Q. Did your parents smoke?  
23 A. No.  
24 Q. What did your father do for a  
25 living as you were growing up?

0031

1 M. Szymanczyk  
2 A. My father worked for Sears Roebuck  
3 & Company in Gary, Indiana for most of my  
4 childhood. He worked in a retail store as a  
5 salesman and a lower level manager in that store.  
6 Q. Was that his main career with Sears  
7 over the years?  
8 A. That was his career with Sears. He  
9 retired from that position and then later he  
10 taught in a junior college for ten years.  
11 Q. What subject?  
12 A. Business.

13 Q. Did your mother work outside the  
14 home?  
15 A. No.  
16 Q. Do you have siblings?  
17 A. I have one sister.  
18 Q. Is she employed or has she worked  
19 over the years?  
20 A. Yes.  
21 Q. Generally what kind of work has she  
22 done?  
23 A. She is a musician.  
24 Q. Professionally?  
25 A. She teaches piano and the company

0032

1 M. Szymanczyk  
2 is professional musicians so I guess. She earns a  
3 living with music.  
4 Q. Does she teach individuals or does  
5 she teach at a college?  
6 A. No, I believe she teaches  
7 individuals. She doesn't teach at a college as  
8 far as I know.  
9 Q. Is your sister a smoker?  
10 A. No.  
11 Q. Never?  
12 A. Not to my knowledge.  
13 Q. "Never let the goody-two-shoes get  
14 you down." Does that ring a bell?  
15 A. No.  
16 Q. Think about it. "Never let the  
17 goody-two-shoes get you down." It doesn't ring a  
18 bell?  
19 A. No.  
20 Q. What does that statement mean to  
21 you?  
22 A. I don't know.  
23 Q. You would have to know the context?  
24 A. Absolutely.  
25 Q. Would it surprise you to learn that

0033

1 M. Szymanczyk  
2 that statement appears in Philip Morris  
3 advertising?  
4 A. I don't know. What kind of  
5 advertising are you referring to?  
6 Q. Cigarette advertising for a  
7 particular brand.  
8 A. Okay.  
9 Q. As you sit here today you don't  
10 know the brand?  
11 A. I do, yes.  
12 Q. How did it come to you?  
13 A. I believe it's a line of Virginia  
14 slims ad.  
15 Q. You're right. How come it didn't  
16 ring a bell when I said it to you?  
17 A. I just didn't make the connection.  
18 Q. Did you have any input in okaying  
19 that statement in the Virginia Slims ad?  
20 A. I would have approved the ad,  
21 ultimately the ad.  
22 Q. What is that saying to the public,  
23 "never let the goody-two-shoes get you down"?

24 A. Well, I believe the tone of that  
25 advertising is simply to say that as an adult

0034

1 M. Szymanczyk  
2 woman you make your own decision about what  
3 product you smoke. Virginia Slims advertising  
4 positioning is very simply to say to adult women  
5 smokers who are smoking a mainstream cigarette  
6 brand like a Marlboro or a Camel or a Winston,  
7 that there is a cigarette brand that's made that's  
8 just for women, so that's what it refers to.

9 Q. Who are the goody-two-shoes?

10 A. I don't know. I think that's just  
11 a phrase.

12 Q. Philip Morris is telling the  
13 American people and you're going to tell this jury  
14 that you've changed, right?

15 A. Well, I'm going to tell the jury  
16 how I run the business.

17 Q. You're going to tell the jury, this  
18 is a jury who found that Philip Morris has  
19 committed fraud and lied to the American people  
20 and it's been involved in a conspiracy for  
21 decades, you're going to tell the jury we don't do  
22 that anymore?

23 A. I'm going to tell the jury how I  
24 run the business, how it operates today and what  
25 we're doing.

0035

1 M. Szymanczyk  
2 Q. Do you think that you have  
3 credibility as the CEO of Philip Morris U.S.A.  
4 when you sit there and say that you don't know who  
5 the goody two shoes are being referred to in your  
6 Virginia Slims ad?

7 MR. WEBB: Object to the form of  
8 the question.

9 Q. What I would suggest to you is it's  
10 obvious to any objective person who the  
11 goodie-two-shoes who is referred to in that ad  
12 when talking about goody-two-shoes?

13 MR. WEBB: I object to the  
14 argumentative form of the question.

15 Q. You can answer it.

16 A. Well, I don't think it's obvious.  
17 I think it's a phrase in the ad and I don't think  
18 that it's intended to point out any particular  
19 thing. That's the way I saw it when I saw the ad.

20 Q. You don't think the goody-two-shoes  
21 refers to parents who are telling their kids not  
22 to smoke or to doctors who are telling people not  
23 to smoke or to surgeon generals who are telling  
24 people not to smoke? Aren't they the goody two  
25 shoes in the context of this ad?

0036

1 M. Szymanczyk

2 A. Absolutely not.

3 Q. What does it mean "don't let them  
4 get you down"? What does that mean? It's your  
5 ad, tell me what it means.

6 MR. WEBB: Object to the form of  
7 the question. He just answered the  
8 question. It's been asked and answered.

9 MR. ROSENBLATT: This is a  
10 different question.  
11 Q. The question before had to do with  
12 your understanding of goody-two-shoes. Now I'm  
13 asking you "don't let the goody-two-shoes get you  
14 down." What does "get you down mean" in the  
15 context of that ad?  
16 A. Well, the ad as a whole has one  
17 particular meaning which I have already  
18 explained. The pieces of the ad are simply pieces  
19 put together to make that one particular  
20 statement, which is that this is a cigarette  
21 that's made for women who smoke and if you're a  
22 woman that smokes and you're smoking a mainstream  
23 brand, this is a cigarette that you might like  
24 better. That's the context for that advertising.  
25 That's what the message is and that's what the

0037

1 M. Szymanczyk  
2 meaning is that's intended in the ad.  
3 Q. Are you saying the goody two shoes  
4 in the context of that ad are women who are  
5 smoking other brands?  
6 A. No, I'm not suggesting that.  
7 Q. Who came up with that sentence?  
8 A. The advertising agency.  
9 Q. Which agency?  
10 A. I believe that advertising is done  
11 by Leo Burnett.  
12 Q. Do you know the name of the  
13 particular individual at that agency who came up  
14 with this?  
15 A. No.  
16 Q. But you could find out, with a  
17 phone call you could find out?  
18 A. I suppose. If that's possible. I  
19 don't know if it is or isn't. It may have been a  
20 group. I don't know that it was an individual.  
21 Q. Does Philip Morris advertize in the  
22 swimsuit edition of Sports Illustrated?  
23 A. We advertise in Sports Illustrated.  
24 Q. Have you ever looked through a  
25 swimsuit edition of Sports Illustrated?

0038

1 M. Szymanczyk  
2 A. Not for a long time.  
3 Q. Do you think the swimsuit edition  
4 of Sports Illustrated is read by a huge number of  
5 adolescent boys since the majority of the pictures  
6 are of attractive women who are naked or close to  
7 naked?  
8 A. I should hope not. That particular  
9 edition has a circulation profile and unless it  
10 meets the criteria that we have set for  
11 circulation, which is really an adult criteria, we  
12 wouldn't be in it.  
13 Q. Does cigarette smoking cause lung  
14 cancer and other diseases?  
15 A. Are you asking for the company's  
16 position on that or are you asking for my  
17 opinion?  
18 Q. Well, at this point I'm taking your  
19 deposition, I guess I'm asking for your opinion.



20 A. I'm not a scientist,  
21 Mr. Rosenblatt, so I can only tell you what I have  
22 told you before, I think smoking is bad for your  
23 health.

24 Q. This is a different question. It  
25 really calls for a yes or no answer and then you

0039

1 M. Szymanczyk  
2 could explain your answer.

3 Does cigarette smoking cause lung  
4 cancer and other diseases?

5 A. Again, you're asking my personal  
6 opinion?

7 Q. I'm asking your opinion not only  
8 personally but as the CEO of Philip Morris, Inc.

9 MR. WEBB: I'm going to object.  
10 It's a compound question because obviously  
11 he is in a different position. He could  
12 tell you what the company's position is or  
13 he could tell you what his personal  
14 opinion is. I object to the compound form  
15 of the question.

16 Q. What's your personal opinion on  
17 that? What's your personal answer to that  
18 question?

19 A. My personal answer I have given  
20 you. I think smoking is bad for your health. I  
21 don't know enough from a point of view of being a  
22 medical practitioner or scientist to answer the  
23 question personally. I can only give you  
24 information relative to what I do know about the  
25 science related to that subject.

0040

1 M. Szymanczyk

2 Q. Let me suggest to you, with all due  
3 respect, that I think that's precisely the kind of  
4 answer which led to the jury verdict in the Engle  
5 case because the jury perceived for nine months  
6 that they were hearing this kind of stuff. You  
7 would ask someone from Philip Morris, you would  
8 ask one of the doctors, one of the experts they  
9 put on, does cigarette smoking cause lung cancer  
10 and other diseases and you get the kind of answer  
11 you just gave which avoids the question.

12 I want to give you an opportunity  
13 since the position at trial is going to be if  
14 Philip Morris has changed its ways, we have gotten  
15 your message, ladies and gentlemen of the jury,  
16 and we're a different company and the egregious  
17 behavior and lying and fraud you found us guilty  
18 of over decades, we don't do it anymore. I'm  
19 giving you the opportunity to give a straight  
20 answer to that question.

21 Does cigarette smoking cause lung  
22 cancer and other diseases? If your answer is the  
23 same, just tell me.

24 MR. WEBB: I object to the form of  
25 the question as argumentative. He has

0041

1 M. Szymanczyk  
2 already answered the question.

3 Q. You have already answered the  
4 question, that's it?

5 A. I have answered the question that  
6 you asked me. If you want to ask me a different  
7 question, I will answer it.  
8 Q. You haven't answered the question I  
9 asked you. The question is: Does cigarette  
10 smoking cause lung cancer and other diseases?  
11 Your answer is cigarette smoking is dangerous for  
12 your health. That's doesn't answer the question?  
13 MR. WEBB: The question was his  
14 personal opinion as to whether cigarette  
15 smoking causes lung cancer and other  
16 diseases. He answered that question. I  
17 object to the form of the last question.  
18 Q. It doesn't answer the question.  
19 You have not answered my question. Does cigarette  
20 smoking cause lung cancer and other disease and  
21 all you do is tell me you think cigarette smoking  
22 is dangerous to your health.  
23 In your personal opinion does  
24 cigarette smoking cause lung cancer or doesn't it?  
25 A. Well, look, I have given you my

0042

1 M. Szymanczyk  
2 answer in terms of my personal opinion, but I have  
3 also told you I'm not a scientists and I'm not a  
4 doctor so I rely on scientist for information on  
5 this. I have to. That's the only place I could  
6 get information.  
7 My scientists would tell me and I  
8 would believe them that if your definition of  
9 cause is strong statistical evidence that  
10 correlates smoking with certain diseases, then,  
11 yes, I think it's a fair statement to say that  
12 smoking causes lung cancer and has that similar  
13 statistical association with some other diseases,  
14 but that's based on what scientists tell me by  
15 interpreting the data. It's not based on my  
16 ability to interpret them.  
17 Q. As the CEO of Philip Morris, Inc.,  
18 has it been scientifically proven that cigarette  
19 smoking causes lung cancer and other diseases?  
20 A. I think that would depend on your  
21 definition of scientifically proven. If your  
22 definition of proof is, as I mentioned, strong  
23 statistical evidence, then scientists formed a  
24 consensus about that evidence and made a decision  
25 about what it means, which is what's been done in

0043

1 M. Szymanczyk  
2 the case of tobacco and the public health  
3 authorities in this country.  
4 If you're talking about  
5 scientifically proven being a determination of the  
6 mechanism by which smoker constituents smoke cause  
7 disease, to the best of my knowledge that  
8 mechanism has not yet been identified or that  
9 chain of events has not yet been identified. I  
10 think there's scientific consensus in general in  
11 the scientific community that that's a true  
12 statement.  
13 Q. So if you use the definition which  
14 requires proof of the mechanism of cause, then  
15 using that definition, cigarette smoke does not

16 cause lung cancer as opposed to the statistical  
17 definition where you would say it does?

18 A. No, I would say if you use  
19 mechanism, the answer to the question is it's  
20 unknown.

21 Q. When I was questioning you on the  
22 subject, you asked me my opinion or the company's  
23 position. What's the company's position on that  
24 question? Does cigarette smoking cause lung  
25 cancer and other disease?

0044

1 M. Szymanczyk

2 A. The company's position is that  
3 there is an overwhelming scientific and medical  
4 consensus that smoking causes lung cancer and  
5 emphysema and other diseases.

6 Q. Has Philip Morris ever said on its  
7 website or anywhere else that we as a company  
8 agree with that consensus?

9 A. We have not.

10 Q. Why not?

11 A. Because we concluded in 1997 that  
12 the only public positions that we would provide  
13 would be those that reinforced or simply put us in  
14 the position of standing down relative to whatever  
15 positions the public health community felt were  
16 appropriate to communicate. So on our website we  
17 have simply reinforced and provided the public  
18 health position so there is only one voice to the  
19 public on the subject of smoking and health.  
20 That's the position and policy we have in place in  
21 our company.

22 Q. If you recognize that there is in  
23 fact a universal scientific and medical consensus  
24 on the issue of causation, why not go that one  
25 extra step and say you know, that's it, that's a

0045

1 M. Szymanczyk

2 fact, we agree with it and you buy our product at  
3 your own risk?

4 A. Because we agreed there would be  
5 only one voice with members of congress so we have  
6 stuck with that agreement and we provided the  
7 information that supports what the public health  
8 community says on this subject and we do it in a  
9 very clear fashion and, in fact, with a lot of  
10 access to additional information from the public  
11 health authorities. That's how we have chosen to  
12 operate.

13 Q. What was your personal involvement,  
14 if any, in terms of negotiating the master  
15 settlement agreement?

16 A. I was not involved in negotiating  
17 the master settlement agreement.

18 Q. Were you CEO when the master  
19 settlement agreement was entered into it?

20 A. Yes.

21 Q. So obviously you agreed to it?

22 A. Yes, I did.

23 Q. Why?

24 A. I simply didn't negotiate it.

25 Q. Why? Let me tell you what sense

0046

1 M. Szymanczyk  
2 I'm asking this question in. The attorney  
3 generals' cases against the tobacco company were  
4 regarded by many lawyers as a joke, there's never  
5 been any precedent for that, attorney generals  
6 never were successful, it was a totally unique  
7 kind of litigation, so what persuaded you? No  
8 case had gone to verdict, you didn't lose any  
9 appeal, what persuaded you to enter into a  
10 voluntary settlement to pay the states 246 billion  
11 dollars.

12 MR. REILLY: Object to the form of  
13 the question.

14 Q. Why did you do that?

15 A. Mr. Rosenblatt, I believe when you  
16 have a whole group of the senior law enforcement  
17 officials of the states of this country suing you,  
18 making the accusations that they made, that  
19 somewhere in there there is a pretty good message  
20 that you need to understand what's not working  
21 right and where you're out of step with what these  
22 representatives of the people of this country  
23 expect from you. I think that our approach to the  
24 master settlement agreement was really because we  
25 wanted to not be in that circumstance.

0047

1 M. Szymanczyk  
2 The reason I was interested in that  
3 agreement was because I wanted to find out what  
4 they expected of us so that we could focus on  
5 delivering that. I didn't want to be in a  
6 position of fighting with the senior law  
7 enforcement officials of all of the states of the  
8 union, having them believe that we were operating  
9 our business that they found unacceptable. That's  
10 why I thought the master settle agreement was  
11 important to do. That was my primary goal with  
12 it.

13 It also certainly removed that  
14 litigation which was also a distraction for our  
15 organization and for our business to have to be  
16 involved with. That's the second reason.

17 Q. Who was the lead lawyer for Philip  
18 Morris in terms of negotiating the master  
19 settlement agreement?

20 A. I believe Meyer Koplow was.

21 Q. Were you in close consultation with  
22 him as to the progress of the negotiations?

23 A. I would periodically meet with  
24 him. There were some issues that I would have to  
25 get involved in.

0048

1 M. Szymanczyk

2 Q. You were with Philip Morris when  
3 there was a discussion of a national settlement  
4 which would have cost the tobacco company 368  
5 billion dollars?

6 A. Yes.

7 Q. What was your position during that  
8 time frame?

9 A. I would have either been executive  
10 vice president of sales and marketing. I believe  
11 that that actually got announced in June of 1997

12 if I remember right which would have been when I  
13 became CEO.  
14 Q. What was announced in June of '97?  
15 A. Didn't they call that the June 20th  
16 agreement? Isn't that they referred to it as?  
17 Q. I think so. At some point Philip  
18 Morris was willing to go along with the 368  
19 billion dollar national settlement, correct?  
20 A. Yes, that's correct.  
21 Q. From your perspective what caused  
22 Philip Morris to pull out of that deal?  
23 A. Congress didn't enact it. It  
24 required a legislation by congress in order to  
25 enact it.

0049

1 M. Szymanczyk  
2 Q. Are you saying that had Congress  
3 enacted the legislation necessary to implement the  
4 358 billion dollar deal, you would have gone along  
5 with it?  
6 A. Yes.  
7 Q. What happened? Politically what  
8 happened as to why Congress didn't enact the  
9 legislation?  
10 A. I can't tell you I exactly know,  
11 but they decided not to enact.  
12 Q. What was your involvement and the  
13 involvement of your company in terms of lobbying  
14 or anything else of the Florida legislator to pass  
15 the recent legislation that it passed which  
16 directly impacts the Engle trial?  
17 MR. WEBB: I'm going to object on  
18 record. There is a motion to eliminate we  
19 filed this week that goes to this issue.  
20 I'm not going to direct the witness not to  
21 answer. Can I have a continuing objection  
22 based on that position? I won't argue  
23 it. He may answer the question.  
24 MR. ROSENBLATT: Fine.  
25 A. Could you repeat the question.

0050

1 M. Szymanczyk  
2 Q. I'm basically asking you what was  
3 your involvement, the involvement of your company,  
4 in terms of the Florida legislation which just  
5 went into effect impacting the Engle trial?  
6 A. Well, my company, Philip Morris  
7 U.S.A., really didn't have any involvement in  
8 that. We don't have a lobbying activity or people  
9 focused on that within our company, so we didn't  
10 have any involvement.  
11 Q. Who would have been the person at  
12 Philip Morris advising you of the progress of this  
13 legislation?  
14 A. Well, frankly, nobody really  
15 advised me of the progression of this legislation.  
16 Q. To your knowledge --  
17 A. Actually I read about it. I knew  
18 it was going on, but Philip Morris companies, for  
19 the whole Philip Morris companies, conducts its  
20 agreement, relations, activities and I don't have  
21 a government relations program in place, but I  
22 would hear -- I knew it was going on, but we

23 weren't specifically involved in the activity.  
24 Q. Was Philip Morris companies  
25 lobbying the Florida legislature?  
0051  
1 M. Szymanczyk  
2 A. I don't know.  
3 Q. Who is your immediate supervisor?  
4 A. William Webb.  
5 Q. What is his title?  
6 A. He is the chief operating officer  
7 for Philip Morris companies.  
8 Q. Who is above him, Bible?  
9 A. Jeff Bible.  
10 Q. Anyone else above him, Webb?  
11 A. Anybody above Webb? What do you  
12 mean? I'm not sure I understand the question.  
13 Q. In terms of chain of command.  
14 A. Webb, Bible, board of directors.  
15 MR. ROSENBLATT: Any relation?  
16 MR. WEBB: I wish. No, there is no  
17 relation.  
18 Q. What has the Engle case cost Philip  
19 Morris in terms of legal fees?  
20 MR. WEBB: I'm going to object to  
21 the form of that question on relevancy  
22 grounds. I'm not going to debate it. I  
23 object to the question on the grounds of  
24 relevancy.  
25 A. I don't know. A lot of money.

0052  
1 M. Szymanczyk  
2 Q. Who would have those figures at  
3 Philip Morris? In other words, if I wanted to  
4 find out, if you wanted to find out what you had  
5 paid for representation in the Engle trial, who  
6 would you go to?  
7 A. I would ask my CFO for that  
8 information. Somebody would have to figure it  
9 out.  
10 Q. Do you know what your trial lawyers  
11 charge by the hour or do they charge by the day?  
12 A. I don't know.  
13 Q. You really don't have a clue as to  
14 whether the lawyers in trial are charging \$1,000  
15 an hour or \$2,000 an hour?  
16 MR. WEBB: I want to object to the  
17 form of the question. I want to object on  
18 the grounds of relevancy. I have a  
19 continuing objection on relevancy  
20 principles to the whole line of  
21 questioning on legal fees and legal fees  
22 on the Engle case. As long as I have that  
23 continuing objection, you may inquire.  
24 MR. ROSENBLATT: You do. I think  
25 that's a perfectly legitimate area of

0053  
1 M. Szymanczyk  
2 inquiry.  
3 MR. WEBB: We disagree on that, but  
4 there is no need to argue.  
5 MR. ROSENBLATT: I agree, there is  
6 no need to argue about it.  
7 Q. You really mean that, you don't

8 have any idea what your trial lawyers charge your  
9 company per hour or per day?  
10 A. I don't know.  
11 Q. Are you not a curious person? You  
12 could find that out with a phone call?  
13 A. I just haven't.  
14 Q. You don't care?  
15 A. I care. I haven't gone to find  
16 that out.  
17 Q. You wouldn't have to go anywhere,  
18 all you would have to do is pick up the phone.  
19 A. I haven't done that.  
20 Q. Is cigarette smoking addictive?  
21 A. Well, yes, I think as the word  
22 addiction is commonly used today I could describe  
23 it that way.  
24 Q. How is the word addiction commonly  
25 used today?

0054

1 M. Szymanczyk  
2 A. Something people do repetitively  
3 that they find hard stop doing or hard to control,  
4 I think.  
5 Q. Is it your view that any smoker who  
6 is sufficiently motivated and makes a firm  
7 commitment and decision to quit can quit?  
8 A. I think that's generally a true  
9 statement. I would say that's a generally true  
10 statement. There are lots of unknowns in this. I  
11 would hate to make the presumption there might not  
12 be somebody for whatever reason had more  
13 difficulty, but I think that's generally true.  
14 Q. Explain to me the relationship  
15 between Philip Morris and Benson & Hedges and what  
16 role, if any, Brown & Williamson has with respect  
17 to Benson & Hedges.  
18 A. Relative to my business?  
19 Q. Relative to anything. Relative to  
20 your knowledge?  
21 A. I'm trying to understand your  
22 question. To my knowledge there is no  
23 relationship. Benson & Hedges brands in my  
24 business in the United States is one of my brands.  
25 Q. It's not one of your brands.

0055

1 M. Szymanczyk  
2 A. It is one of my brands in the  
3 United States. It is one of my brands and there  
4 is no relationship between it and Brown &  
5 Williamson.  
6 Q. How about international Benson &  
7 Hedges?  
8 A. I think it's more complicated  
9 internationally, but I couldn't give you the  
10 specifics on it. I think the brand is owned by  
11 different people around the world. I just don't  
12 know the specifics about that.  
13 Q. From the standpoint of someone who  
14 is not in the tobacco business and how this works,  
15 you have a brand within the United States, when  
16 you talk about a brand worldwide it becomes  
17 complicated and there are different ownerships,  
18 how does that work?

19                   You would think if it's your brand  
20 and it's sold in other countries, it would still  
21 be your brand, so I'm asking how come it isn't.  
22           A.       It's pretty clear, it's just we  
23 don't own it, so somebody else owns it in another  
24 country.  
25           Q.       You own it in America?

0056

1                   M. Szymanczyk  
2           A.       We own the brand in the United  
3 States. We don't own the brand in some other  
4 countries in the world. We just don't own the  
5 interest in the trademark, there's somebody else  
6 who owns it. It's their business. They make the  
7 money from it. They manage the business. We  
8 don't have anything to do with it.  
9           I don't think that's uncommon in  
10 various businesses. It typically has happened  
11 through the history of business as they have grown  
12 from various locations in the world and over time,  
13 transactions occur where you wind up with  
14 sometimes your ownership situation or a brand  
15 that's owned by several different companies in  
16 different places around the world. Benson &  
17 Hedges is simply an example of that.  
18           Q.       Does Philip Morris own Marlboro  
19 wherever it's sold or are there certain countries  
20 where --  
21           A.       We do not own Marlboro brand in  
22 Canada.  
23           Q.       But other than Canada, every other  
24 country in the world where Marlboro is sold it's  
25 owned by Philip Morris?

0057

1                   M. Szymanczyk  
2           A.       I believe that's correct.  
3           Q.       So what's the historical difference  
4 between Benson & Hedges, for example?  
5           A.       I don't know. Someone who has a  
6 history in the business would have to tell you  
7 that.  
8           Q.       It's your understanding that that  
9 situation with Benson & Hedges where Philip Morris  
10 only owns it in the United States has existed for  
11 a number of years?  
12           A.       I'm not sure that we only own it in  
13 the United States. There are other countries I  
14 think we own it, but I don't know the specifics of  
15 that, but the brand is owned by different  
16 companies in various places around the world,  
17 we're one of them. What was the latter part of  
18 your question?  
19           (The requested portion was read.)  
20           A.       Well, the complex ownership  
21 situation I believe is, yes, an artifactive  
22 history in this industry.  
23           Q.       What is Philip Morris  
24 International, Inc.?  
25           A.       It is one of the Philip Morris

0058

1                   M. Szymanczyk  
2 companies and its business is the manufacturing  
3 and marketing of tobacco products in countries



4 other than the United States in its possession.  
5 Q. On your website does Philip Morris  
6 admit that cigarettes cause illness?  
7 MR. WEBB: I'm going to object.  
8 It's been asked and answered. Object to  
9 the form of the question.  
10 Q. You can answer. Unless he tells  
11 you not to answer a question, you can answer.  
12 A. What we do on our website is we  
13 provide a statement that I have already given  
14 you. It's a statement of the current known  
15 position of the public health authorities and  
16 other scientists on the subject of smoking and  
17 disease cause issue.  
18 Q. To your knowledge in any litigation  
19 that Philip Morris has ever been involved in where  
20 a smoker or the survivors of the smoker had sued  
21 Philip Morris, has Philip Morris in a litigation  
22 context ever admitted that the cigarette smoking  
23 caused the lung cancer or has Philip Morris always  
24 blamed the disease on something else?  
25 A. I don't know.

0059

1 M. Szymanczyk  
2 MR. WEBB: Can I state in the  
3 record we have another motion to eliminate  
4 on that subject that deals with that  
5 matter. You may inquire about that. I'm  
6 making the record. I'm objecting. A  
7 motion is pending on eliminating that has  
8 not been ruled upon by Judge Kaye.  
9 MR. ROSENBLATT: Apropos my comment  
10 before the deposition began, if you expect  
11 the judge to address various motions to  
12 eliminate, I don't see how we're going to  
13 begin opening statements.  
14 MR. WEBB: I agree with you. We  
15 have to raise them with the judge at some  
16 time as you and I discussed before this  
17 deposition started.  
18 MR. ROSENBLATT: Right.  
19 MR. WEBB: I'm not instructing him  
20 not to answer. You will not need to come  
21 back to do it. I want to make sure I'm  
22 not waiving anything that we have a motion  
23 to eliminate that deals with the  
24 litigation strategy. He answered the  
25 prior question and he will continue to

0060

1 M. Szymanczyk  
2 answer these questions.  
3 Q. Would you agree that when  
4 Mr. Bible talks to stockholders and other public  
5 settings about the litigation against Philip  
6 Morris, that his consistent theme has been we'll  
7 overcome these cases in the long run?  
8 MR. WEBB: I want to object on the  
9 record. There is another motion to  
10 eliminate pending regarding conduct of  
11 Philip Morris companies as far as its  
12 relevancy in light of the case that Philip  
13 Morris is not named as a party defendant.  
14 You have not made any effort in this

15 litigation to pierce the corporate veil  
16 and, therefore, statements by Mr. Bible or  
17 conduct by Philip Morris is irrelevant.  
18 That motion is pending. I'm not waiving  
19 my objection but he may answer this  
20 question. I would like to have a standing  
21 objection to this line of inquiry and you  
22 may inquire.

23 MR. ROSENBLATT: It's a good thing  
24 we start back to trial on Monday because  
25 you would think of new motions to

0061

1 M. Szymanczyk  
2 eliminate.

3 MR. WEBB: I may have more.

4 MR. ROSENBLATT: You're very  
5 creative.

6 (The requested portion was read.)

7 A. I can't say that I can agree with  
8 that because I'm not necessarily always -- I don't  
9 know all of what Mr. Bible stated relative to  
10 stockholders and analyst and public settings.

11 Q. What have you said about the  
12 litigation, you have always taken a very upbeat  
13 attitude toward the litigation in the sense it's a  
14 problem we have got to deal with it and expensive  
15 but we shall overcome?

16 A. I don't believe I have had  
17 conversation relative to litigation with the  
18 analyst community.

19 Q. Wasn't there a recent profile done  
20 on you in a business magazines, was that Forbes?

21 A. There was something done in Forbes  
22 a year or so ago, yes.

23 Q. That was an interview you obviously  
24 cooperated with?

25 A. I guess it was.

0062

1 M. Szymanczyk

2 Q. Does secondhand smoke cause  
3 disease?

4 MR. WEBB: Objection, relevancy.

5 Q. You can answer it.

6 A. Based on the scientific information  
7 that has been interpreted to me by my scientists,  
8 there isn't a consensus among scientists or the  
9 scientific research that has been done that would  
10 conclude that ETS causes disease among adults. I  
11 think there is some evidence relative to ETS and  
12 some issues with children and I think as a  
13 practical matter, good judgment says I think it's  
14 a good idea to keep secondhand smoke away from  
15 kids.

16 MR. WEBB: Apparently there is a  
17 fire alarm actively going on so I will  
18 check on it. Do you want to take a brief  
19 recess.

20 MR. ROSENBLATT: Yes, it makes  
21 sense.

22 (A recess was taken.)

23 Q. In terms of our Exhibit-A to the  
24 notice of taking your deposition we listed  
25 documents to be produced and I would like to go

0063

1 M. Szymanczyk

2 down them one at a time now.

3 Number one, a current curriculum  
4 vitae or a resume which lists all your  
5 publications and presentations. Do you have that  
6 or does he have that?

7 MR. WEBB: I will produce to you a  
8 document that we have put together and  
9 then you could ask him questions.

10 MR. ROSENBLATT: Okay.

11 MR. WEBB: Yesterday I met with  
12 Mr. Szymanczyk to go through Exhibit-A to  
13 your notice of taking deposition Duces  
14 Tecum, so I spent some time going through  
15 the various paragraphs with Mr. Szymanczyk  
16 and we're producing to you and I will give  
17 you right now a ten inch or so pile of  
18 documents. We're producing documents that  
19 are responsive to certain paragraphs where  
20 there are documents that are responsive.  
21 The paragraphs that I'm responding where  
22 we do have documents are paragraphs four,  
23 five, six, nine and 13.

24 In addition to the documents that  
25 I'm producing to you, Mr. Rosenblatt,

0064

1 M. Szymanczyk

2 pursuant to those paragraphs, there are  
3 also some financial documents like balance  
4 sheets, et cetera, which we already have  
5 produced to you earlier. They will also  
6 be responsive to paragraph four because  
7 they're documents that contain facts that  
8 he may rely upon in giving testimony. I'm  
9 not re-producing those same documents to  
10 you a second time here and the reason is,  
11 if I do produce them, everyone has to sign  
12 these confidentiality agreements all over  
13 again like the court reporter, et cetera.  
14 They are not in the pile. I have already  
15 given those. Those are the financial  
16 records balance sheets, et cetera, of  
17 Philip Morris.

18 In addition to that, as far as  
19 documents that he may rely upon in  
20 testifying, there is the website pages  
21 which I have not produced. They are on  
22 the website. You have access to the  
23 website. You already asked him a couple  
24 of questions about that.

25 There is also, as far as documents

0065

1 M. Szymanczyk

2 and the way documents is defined in  
3 Exhibit-A, there's also some videotapes of  
4 some Philip Morris Youth Smoking  
5 Prevention Department television and media  
6 commercials that are on videotape. I will  
7 make those available for you for your  
8 inspection and viewing. I have one set of  
9 those. They will be made available to  
10 you. There are videotapes of

11 commercials. We'll definitely make them  
12 available to you at a time convenient to  
13 you and your staff.

14 As far as paragraph ten is  
15 concerned, that's a paragraph,  
16 Mr. Rosenblatt, where you're asking for  
17 the billing filing reflected in the total  
18 cost of the Engle litigation. Let me just  
19 state what our position is. We believe  
20 that the Philip Morris U.S.A. billing file  
21 regarding the Engle case would be  
22 irrelevant. You mentioned the Owens  
23 Korning case. It would be relevant if  
24 Philip Morris was relying on the  
25 litigation cost indicated in the Owens

0066

1 M. Szymanczyk  
2 Korning case as one of the reasons to  
3 mitigate or reduce punitive damages  
4 because Philip Morris had already  
5 experienced significant litigation costs.  
6 Philip Morris does not plan on taking that  
7 position under the Owens Korning factor,  
8 therefore, the billing records are  
9 irrelevant. They're certainly not  
10 relevant to any issue from the plaintiff's  
11 standpoint that the plaintiff would offer  
12 into evidence as far as increasing or  
13 aggregating the amount of punitive damages  
14 that should be paid or the ability to pay  
15 and, therefore, the billing records are  
16 irrelevant and I'm not producing those  
17 records.

18 What I'm saying is I'm not  
19 producing those billing records, but there  
20 are records and I acknowledge there are  
21 records. Mr. Szymanczyk testified he does  
22 not know what those records say. There  
23 are billing records. We would have to  
24 take this up with Judge Kaye. You could  
25 ask him any questions you want. They're

0067

1 M. Szymanczyk  
2 not in this file.

3 With that record, the other  
4 paragraphs, he does not have responsive  
5 documents although you're certainly free  
6 to go through those paragraphs as you see  
7 fit. I have a copy and you have a copy in  
8 response to Exhibit-A to your notice.

9 MR. ROSENBLATT: I'm trying to  
10 think from a practical standpoint maybe  
11 during the lunch break I will go through  
12 all of this stuff.

13 MR. WEBB: That's fine.

14 MR. ROSENBLATT: I will hold off on  
15 the specifics of Exhibit-A until after the  
16 lunch break. I think that would probably  
17 save time.

18 Q. What is Carolyn Levy's job at  
19 Philip Morris at the present time?

20 A. She is senior vice president of  
21 Youth Smoking Prevention.

22 Q. What was her job before that?  
23 A. She was senior vice president of  
24 marketing and sales information and marketing  
25 research.  
0068  
1 M. Szymanczyk  
2 Q. As far as you know is she going to  
3 testify in Miami in this trial?  
4 A. I do not believe she is.  
5 MR. WEBB: I will state on the  
6 record I have given you notice that she  
7 will be a witness. I don't discuss who my  
8 witnesses are. He can give whatever  
9 answer he wants. I have given you notice  
10 in my letters to you.  
11 MR. ROSENBLATT: Late.  
12 MR. WEBB: Your position is it's  
13 late. My position is it's earlier than  
14 you have given me on some witnesses. We  
15 could debate that later also. She is on  
16 my witness list.  
17 Q. As far as you know is Ellen Merlo  
18 going to testify at the trial in Miami?  
19 A. I don't know.  
20 Q. Now, I know it's the public  
21 position of Philip Morris that they do not market  
22 to kids, to underage people, correct, that's your  
23 position?  
24 A. Absolutely.  
25 Q. Will you admit that in the past

0069  
1 M. Szymanczyk  
2 Philip Morris marketed to kids?  
3 A. I will tell you in all the time I  
4 have been with Philip Morris I do not believe that  
5 Philip Morris has marketed to kids. I can't speak  
6 for prior to that time.  
7 Q. Well, in terms of the concept of  
8 not being able to speak prior to your time, since  
9 you have been at Philip Morris and since there has  
10 been a lot of litigation, have you made it your  
11 business to review documents which came into  
12 existence before you went to work for Philip  
13 Morris?  
14 A. No.  
15 Q. You're totally unfamiliar then with  
16 documents which precede your employment with  
17 Philip Morris?  
18 A. Basically I think that's true.  
19 Q. Have you ever testified before in a  
20 tobacco trial?  
21 A. No.  
22 Q. Other than today have you ever  
23 given a deposition before in a tobacco case?  
24 A. No.  
25 Q. Have you read the Engle verdicts?

0070  
1 M. Szymanczyk  
2 There are two verdicts that the jury reached in  
3 this case, one in July of '99 and one in April of  
4 this year.  
5 A. I have reviewed those two verdicts,  
6 yes.

7 Q. Do you acknowledge the accuracy of  
8 those findings, that the jury was correct in  
9 saying that Philip Morris has engaged in  
10 fraudulent behavior?

11 A. I don't dispute the finding of the  
12 jury, but I have not reviewed the evidence that  
13 the jury looked at so I can't acknowledge they  
14 made a correct finding, but I certainly respect  
15 the finding that they have made.

16 Q. You would agree that looking at  
17 those verdicts that the jury found Philip Morris  
18 and the other tobacco companies guilty of a lot of  
19 reprehensible behavior, lying, cheating, being  
20 dishonest, fraud, conspiracy, concealment,  
21 intentional infliction of emotional distress? Did  
22 you make it your business to discuss with the  
23 lawyers who represented Philip Morris on what  
24 evidence the jury based those conclusions?

25 A. No.

0071

1 M. Szymanczyk

2 Q. The United States government says  
3 that over 400,000 Americans die every year as a  
4 direct result of cigarette smoking. Do you agree  
5 with that figure?

6 A. Well, we agreed with the United  
7 States government not to have a debate on any of  
8 those issues so I would say if that's what the  
9 government's position is, I would accept the  
10 government's position. I have no way of knowing  
11 whether or not that number is correct. I would  
12 certainly not dispute the government's position.

13 Q. Does that mean you agree with it?

14 A. No, I have no way of knowing, but I  
15 sure wouldn't dispute it.

16 Q. Have you ever read the Frank  
17 statement?

18 A. I have seen the Frank statement  
19 some time ago, yes.

20 Q. In what context did you happen to  
21 look at it?

22 A. It was in the context of litigation  
23 preparation.

24 Q. What did you do to prepare for this  
25 deposition?

0072

1 M. Szymanczyk

2 A. I worked with Mr. Webb, discussed  
3 the subjects that I wanted to present to the jury.

4 Q. About how many meetings have you  
5 had to prepare for the deposition specifically?

6 A. Specifically for the deposition?

7 Q. For the deposition.

8 A. I guess two.

9 Q. Who was present at those meetings  
10 other than Mr. Webb?

11 A. Mr. Zack and Mr. Otero and I don't  
12 know. There was another attorney. I can't  
13 remember his name.

14 Q. Have you actually had sessions  
15 where you went over in answer and question form  
16 the testimony you were prepared to give at trial  
17 in this case?

18 MR. WEBB: I'm going to object on  
19 the grounds of lawyer/client privilege and  
20 as well work product and instruct him not  
21 to answer.

22 Q. What percentage of new smokers  
23 begin smoking at age 16 and under?

24 A. I don't know.

25 Q. I'm not really asking you for a

0073

1 M. Szymanczyk  
2 precise percentage number, but can you give me a  
3 range to that question?

4 A. I really don't know. It's not  
5 something I look at.

6 Q. Do you agree with the statement  
7 that the vast majority of nonsmokers who begin to  
8 smoke do so while they are teenagers or younger?

9 A. Well, I have read that in  
10 newspapers, but I don't have any information or  
11 data that would allow me to tell you that that's  
12 true or to dispute that.

13 Q. Whose idea was it to put Carolyn  
14 Levy in charge of the Youth Prevention Program?

15 A. It was my personnel selection.

16 Q. Do you have research about the  
17 kinds of ads that will be effective to youngsters  
18 in terms of persuading them not to smoke?

19 A. Well, I've seen some research done  
20 outside the company on that general subject, but  
21 to my knowledge there's not been developed a  
22 strong body of research on that topic to this  
23 point in time.

24 Q. Would you be willing to share that  
25 research with either the public health authorities

0074

1 M. Szymanczyk  
2 or the public at large?

3 A. Well, it's not our research, it is  
4 public research. The research I am referring to  
5 was done by the CDC.

6 Q. Centers for Disease Control?

7 A. Yes.

8 Q. Has Philip Morris authorized  
9 research? It doesn't matter to me whether it was  
10 done in-house or whether it was done independently  
11 but paid for by Philip Morris.

12 Has there been that kind of  
13 research authorized and paid for by Philip Morris  
14 even if it was done by an outside company,  
15 research into what kinds of ads would be effective  
16 in persuading youngsters not to smoke?

17 A. Well, the CDC, as I said, has done  
18 some research on that. We didn't have anything to  
19 do with that research.

20 Q. I'm asking was there any other  
21 kinds of research that you did have something to  
22 do with.

23 A. Relative to research?

24 Q. The kinds of ads which would be  
25 effective in persuading kids not to smoke.

0075

1 M. Szymanczyk

2 A. Could you be more specific? I'm

3 not sure I quite understand what you mean by kinds  
4 of ads to persuade kids not to smoke.

5 Q. I have seen ads that Philip Morris  
6 has used in its youth prevention campaign directed  
7 at kids which tell them don't smoke, that kind of  
8 thing.

9 A. Our ads?

10 Q. Your ads.

11 A. Yes, we have done research on our  
12 ads and in terms of what those ads communicate to  
13 kids.

14 Q. Who has done that research for you?

15 A. We do the research internally and  
16 agencies, advertising agencies, also conduct  
17 research. As part of the normal course of  
18 producing an advertisement, we would not put an  
19 advertisement on the air until it had gone through  
20 normal consumer package, including advertising  
21 research to understand what it was communicating.

22 Q. Would you be willing to make that  
23 research available to the public or the public  
24 health authorities or are you saying it is  
25 available?

0076

1 M. Szymanczyk

2 A. I believe we have made that  
3 research available to various people at various  
4 points in time. I can't tell you off the top of  
5 my head what the specifics are. I know we have  
6 made it available, for example, to networks as a  
7 part of putting the commercials on air.

8 Q. What is the cost to Philip Morris  
9 of the sponsorship of Marlboro advertising?

10 A. I believe the cost of the  
11 sponsorship is in the range, I believe it's about  
12 in the range of 15 million dollars. I think  
13 that's correct. That's approximate.

14 Q. Per year?

15 A. Per year.

16 Q. How many millions of people are in  
17 your database?

18 A. I don't know off the top of my  
19 head.

20 Q. You think it's over 30 million?

21 A. I don't know if it's that high.  
22 It's a number that changes, so I don't know if  
23 it's that high.

24 Q. How often, whatever the number is,  
25 let's just for the sake of the question say 30

0077

1 M. Szymanczyk

2 million. How often would the smokers in your  
3 database receive communications from Philip  
4 Morris?

5 MR. REILLY: Object to the form.

6 A. I don't have a precise answer to  
7 that. It would I believe depend on what brand  
8 that smoker smoked, for example, or whether they  
9 were a competitive smoker so I can't give you an  
10 answer to that.

11 Q. From a substantive standpoint, can  
12 you tell me what were the major differences  
13 between the congressional package that you were



14 willing to enter into for 368 billion dollars and  
15 the package with the state attorney generals for  
16 246 billion dollars, either the similarities or  
17 differences between those two agreements?

18 A. In many ways they are the same.  
19 The fundamental difference was the amount of  
20 money. They are different in the fact that one is  
21 an agreement that applied to the people who signed  
22 the agreement. The other required Federal  
23 legislation which would have made it apply to all  
24 tobacco in the United States and that it included  
25 essentially the removal of punitive damages and

0078

1 M. Szymanczyk  
2 class action lawsuits. I'm going to put a cap on  
3 the compensatory damages that the company would  
4 pay or the industry, we pay in any given year.

5 There are some other, I think,  
6 probably, differences and I can't recall them all,  
7 but I think those are the fundamental differences  
8 that exist between the two agreements.

9 Q. Under the national agreement would  
10 the Marlboro man have disappeared from  
11 advertising?

12 A. I think it would have. I believe  
13 that's correct.

14 Q. And obviously the Marlboro man does  
15 not disappear under the state deal?

16 A. Well, it disappeared in a different  
17 way, but, yes, that is true. It was not  
18 prohibited from any use under the AG agreement.

19 Q. What do you mean when you say it  
20 disappeared in a different way?

21 A. The primary advertising was  
22 billboards which in both agreements was eliminated  
23 and so in that way it was eliminated.

24 Q. Was 1999 the best year in the  
25 history of Philip Morris, Inc.?

0079

1 M. Szymanczyk

2 A. No.

3 Q. Which year was the best?

4 A. What's your measure of best?

5 Q. What's your measure of best?

6 A. Well, I think that probably how I  
7 would measure best would really be in terms of  
8 overall accomplishment of progress towards our  
9 mission and share growth and income growth.

10 Q. I'm defining best in pure economic  
11 terms.

12 A. You would say I guess in income  
13 growth it wouldn't be in the top five income  
14 growth. In fact, it would be probably in the  
15 company's history pretty poor.

16 Q. Why did the tobacco analysts keep  
17 saying that '99 was the greatest year in the  
18 history of Philip Morris? What criteria are they  
19 using?

20 MR. WEBB: I want to object to the  
21 form of the question as far as speculating  
22 on what was in the minds of other people.

23 Q. Have you not seen tobacco analysts'  
24 reports referring to 1999 as the greatest year in

25 Philip Morris' history?

0080

1 M. Szymanczyk

2 A. I don't recall ever seeing that,  
3 no.

4 Q. What is your present salary?

5 A. My present salary is \$810,000 a  
6 year.

7 Q. When you became CEO, what was your  
8 salary?

9 A. I don't remember exactly, 575,  
10 something in that range, approaching 600, I  
11 believe.

12 Q. You've had yearly increases?

13 A. I think that's right.

14 Q. When did it go to 810?

15 A. May 1st.

16 Q. What was it before it jumped from  
17 what to 810?

18 A. Seven hundred twenty-five.

19 Q. Since you became CEO, have you  
20 received a yearly bonus?

21 A. Yes.

22 Q. Tell me the amount of each bonus  
23 since you became CEO.

24 A. I don't know if I can remember  
25 since I became CEO. I could tell you the last one

0081

1 M. Szymanczyk

2 I got.

3 Q. What was the last one you got?

4 A. It was \$850,000.

5 Q. This was for 1999?

6 A. Yes, sir.

7 Q. You haven't gotten the 2000 bonus  
8 yet?

9 A. No, sir.

10 Q. Would you anticipate that your  
11 bonus this year would be greater than your bonus  
12 last year?

13 A. My bonus paid next year for this  
14 year's performance?

15 Q. Right.

16 A. I can't anticipate that. It would  
17 depend on the requirement I deliver relative to  
18 our objectives for the company.

19 Q. What was your bonus in '98?

20 A. I think it was \$750,000. I think  
21 that's right.

22 Q. Is it accurate to say that your  
23 bonus has increased every year since you became  
24 CEO?

25 A. Yes, I think that's right.

0082

1 M. Szymanczyk

2 Q. How much stock do you own in the  
3 company?

4 A. How much do I own?

5 Q. Yes, or have options on.

6 A. Let's be clear about the question.

7 You want to know how much I own that I have, that  
8 I actually have ownership of? That would be about  
9 4,900 shares.

10 Q. What's the other category?  
11 A. Then there would be options that  
12 I'm vested in and there would be options that I'm  
13 not vested in and then there would be restricted  
14 stock, which obviously I don't own at this point.  
15 Q. Any other category of stock?  
16 A. No, I think that covers it.  
17 Q. So you personally own you say 4,900  
18 shares?  
19 A. I think that's right.  
20 Q. Of what company?  
21 A. Philip Morris companies. There is  
22 no stock in my company.  
23 Q. Philip Morris companies?  
24 A. Yes.  
25 Q. How many shares do you have options

0083

1 M. Szymanczyk  
2 vested in?  
3 A. I think it's about somewhere  
4 between 600 and 700,000 shares. I believe that's  
5 correct.  
6 Q. How many in options that are not  
7 vested?  
8 A. About a little over 400,000.  
9 Q. How many shares of restricted  
10 stock?  
11 A. I think it's 134,000 shares.  
12 Q. Explain each of these categories.  
13 They seem to be kind of self-explanatory, but  
14 explain.  
15 When you talk about stock that you  
16 have options vested in, you're making a  
17 distinction between that category and actual  
18 ownership?  
19 A. Think about this, stock I am vested  
20 in if I left, it wouldn't be mine. They are  
21 options that I'm vested in. It's not stock. I  
22 don't have stock that I'm vested in other than the  
23 4,900 shares that I own. That's mine.  
24 Options that I'm vested in would be  
25 if I left the company tomorrow, I would have

0084

1 M. Szymanczyk  
2 access to those for a period of time and could  
3 exercise them potentially. Stock that I am not  
4 vested in I would lose. Restricted stock which  
5 requires me to be here for a number of years I  
6 would lose.  
7 Q. If you left?  
8 A. If I left.  
9 Q. If you left the company?  
10 A. That's if I left. That's how those  
11 categories work.  
12 Q. Within the last two years, within  
13 the last three years, your stock in options you're  
14 vested in, have they increased, decreased or  
15 stayed about the same?  
16 A. What I'm vested in has gone down.  
17 Q. How about stock that you actually  
18 own?  
19 A. It's gone down too.  
20 Q. What is Philip Morris stock selling

21 for now on the market?  
22 A. I didn't look yesterday but 22, \$23  
23 a share, something like that.  
24 Q. When you became CEO, what was it  
25 selling for?

0085

1 M. Szymanczyk  
2 A. I don't know exactly. Around 40  
3 something.  
4 Q. About twice as much?  
5 A. Yes.  
6 Q. What does that mean in practical  
7 terms, that the stock in terms of the operational  
8 health of the company, the stock has decreased in  
9 value by half, what is the practical significance  
10 of that to the company, to you?  
11 A. To me the practical significance is  
12 that I'm getting out of that portion of my  
13 compensation little or no value. To the company,  
14 from an employee point of view, for a significant  
15 number of employees who are vested in stock or  
16 have it as part of their retirement program, they  
17 have been hurt by that outcome.  
18 Q. Is it fair to say that from the  
19 standpoint of judging your performance, the board  
20 of directors has in no way penalized you for the  
21 stock going down because your salary and your  
22 bonus have done nothing but increase?  
23 A. Well, I think the way they look at  
24 it is the stock is a significant portion of your  
25 compensation package and the stock goes down,

0086

1 M. Szymanczyk  
2 you're penalized. So I have been penalized  
3 substantially by the fact that the stock has gone  
4 down.  
5 Q. How does that work? What is the  
6 stock part of your compensation package? Are you  
7 guaranteed a certain number of shares every year?  
8 How does that work?  
9 A. No, you're granted shares at the  
10 discretion of the board of the company, but that  
11 typically takes place on an annual basis so the  
12 amount varies.  
13 Q. In your first year as CEO, how many  
14 shares were you given as part of your compensation  
15 package?  
16 A. I don't remember that.  
17 Q. I'm just trying to get a range  
18 during the period of years you have been CEO.  
19 A. I can't remember it in that kind of  
20 increment. The shares are granted based on I  
21 guess a formula the company uses, so they decide  
22 each year how much they're going to give you in  
23 terms of options. We're talking about options.  
24 Q. I understand. Those options are  
25 options you would be vested in which are part of

0087

1 M. Szymanczyk  
2 your compensation?  
3 A. You're granted options and then  
4 they have a period of time before they're vested.  
5 In other words, that is there to keep you retained

6 with the company.  
7 Q. As an incentive to stay with the  
8 company?  
9 A. Absolutely.  
10 Q. What do you attribute the lowering  
11 of the stock price of Philip Morris in the last  
12 couple of years?  
13 A. I think it's primarily attributed  
14 to the threat of litigation against the company  
15 and the unpredictability of the company's future  
16 in the tobacco business. I think that has had an  
17 impact in this business right here, my business.  
18 Q. As I read the tobacco analysts, and  
19 I have looked at a lot of their statements, they  
20 attribute the lowering of the price of Philip  
21 Morris stock almost exclusively to the Engle case  
22 and the potential of a large punitive damage  
23 award. Do you agree with that?  
24 A. No.  
25 Q. Why don't you agree with that?

0088

1 M. Szymanczyk  
2 A. Because I think they attribute part  
3 of it to that, but they also know that there is a  
4 substantive body of litigation beyond the Engle  
5 case.  
6 Q. Do you agree that the stock market  
7 has already discounted the Engle case in the sense  
8 they have assumed there will be a large punitive  
9 damage award and that's the reason why the stock  
10 prices have lowered?  
11 A. I don't have any way of knowing  
12 that.  
13 Q. Well, would you agree that if the  
14 jury in the Engle case came back with a punitive  
15 damage award which was much lower than that being  
16 talked about in the media and that being talked  
17 about by the tobacco analysts, that the price of  
18 your stock would climb, it would soar?  
19 MR. WEBB: I am going to object on  
20 the grounds of speculation and also lack  
21 of personal knowledge. Object to the form  
22 of the question.  
23 A. I don't know.  
24 Q. Are you a student of the stock  
25 market?

0089

1 M. Szymanczyk  
2 A. No.  
3 Q. Do you own stock in any companies  
4 other than your own company?  
5 MR. WEBB: I'm going to object on  
6 the grounds of relevancy.  
7 A. No. As a practical matter I invest  
8 in primary mutual funds.  
9 Q. Since you have worked for Philip  
10 Morris in any capacity, what has been the pattern  
11 of price rises in cigarettes?  
12 A. I can't say there has been a  
13 pattern.  
14 Q. Because my understanding  
15 historically is that Philip Morris and probably  
16 other tobacco companies as well normally raise the

17 price of cigarettes twice a year; is my  
18 understanding incorrect?

19 A. That would have not been my  
20 experience during my tenure with Philip Morris.

21 Q. Tell me what your experience has  
22 been about price rises.

23 A. There have been years where they  
24 were less than what you described. There have  
25 been years where the price increases and there

0090

1 M. Szymanczyk  
2 have been years where they have multiple price  
3 increases.

4 Q. In which year was there multiple  
5 price increases?

6 A. I can't tell you that off the top  
7 of my head.

8 Q. During your tenure when did the  
9 price go down?

10 A. 1993.

11 Q. That's the famous Marlboro Friday?

12 A. That's correct.

13 Q. How about since '96, has there ever  
14 been a decrease?

15 A. No.

16 Q. So each year, each year since '94,  
17 is it fair to say that the prices have gone in one  
18 direction, up?

19 A. The price has gone up, I believe.  
20 I think it's gone up each year since 1994. I'm  
21 not certain about 1994. I can't remember.

22 Q. What's the average price for a  
23 price of Marlboro in New York City today?

24 MR. WEBB: I think you mean the  
25 price of a package.

0091

1 M. Szymanczyk

2 MR. ROSENBLATT: What did I say?

3 MR. WEBB: You said price for a  
4 price.

5 A. I don't know in New York City per  
6 se. I can't tell you New York City.

7 Q. What's your perception of an  
8 average price in most cities?

9 A. An average price would be maybe  
10 \$3.25, something like that.

11 Q. Does that approximate same price  
12 apply to the other premium brands of Philip  
13 Morris?

14 A. I would say it would be in that  
15 range, yes.

16 Q. Either that or pretty close to  
17 that?

18 A. Understand there is quite a  
19 variation because those prices reflect state  
20 excise taxes which are different in every state.

21 Q. I just took out of my pocket a  
22 package of Marlboro cigarettes where it says "U.S.  
23 tax exempt for use outside the United States."  
24 This package, I believe, has a Florida tax stamp  
25 on it.

0092

1 M. Szymanczyk

2 If a person went into a store in a  
3 city in America and bought this with the  
4 designation on the package, "U.S. tax exempt for  
5 use outside U.S.," what would that mean to you?  
6 Look at it.

7 A. This product is a product that was  
8 manufactured and sold somewhere else in the world  
9 other than the United States and then somebody  
10 bought it overseas and likely, unless this is  
11 counterfeit, which is also a possibility, somebody  
12 brought it back into the United States passed  
13 customs, which is essentially Federal excise tax  
14 and has resold it to whoever you bought it from.

15 Q. In your opinion would the retailer  
16 know that they were doing something wrong by  
17 buying this?

18 A. Yes, they would know that they are  
19 operating on the fringe relative to this. This is  
20 not legal in some states. How this was brought in  
21 the country may have made it illegal in the United  
22 States as of January 1st of this year. The  
23 warning label on this package does not comply with  
24 the U.S. requirement for warning labels.

25 Q. What does that warning label say?

0093

1 M. Szymanczyk

2 A. This one says, "U.S. Surgeon  
3 General's Warning: Smoking by pregnant women may  
4 result in fetal injury, premature birth and low  
5 birth weight."

6 Q. How does that differ from one of  
7 the four required warnings?

8 A. That part is the same, but there  
9 are very specific requirements and this labeling,  
10 for example, U.S. doesn't belong there. There is  
11 a rotation requirement for the brands. This  
12 likely doesn't meet the rotation requirement.  
13 That's what I mean. It does not meet the FTC  
14 guidelines for products to be sold in the United  
15 States. That's what it is.

16 Q. What is the term gray market mean  
17 to you?

18 A. That would be gray market.

19 Q. What you just described?

20 A. Yes.

21 Q. What you're saying is that Philip  
22 Morris has no part of the transactions which  
23 you're speculating about had to have occurred for  
24 this pack to have gotten into a retail store?

25 A. That's correct.

0094

1 M. Szymanczyk

2 Q. What has Philip Morris done to  
3 obliterate the gray market or prevent this from  
4 happening?

5 A. We filed litigation in a few  
6 circumstances due to trademark violation to stop  
7 gray market and had some success there. We have  
8 changed our packaging worldwide and have changed  
9 the warning label so that the FTC is now issued a  
10 letter indicating that the warning label we're  
11 using for products overseas does not comply in the  
12 U.S. and issued a letter in that regard.

13                   The Federal government, as I  
14 mentioned, has passed legislation. That  
15 legislation took effect January 1st of this year,  
16 which put some really strict rules in place  
17 regarding how that product could come back. And  
18 then the states, I believe it's now 29 states,  
19 have passed legislation, including the state of  
20 Florida, to make this product illegal. The law in  
21 Florida will go into effect October 1st, I  
22 believe.

23                   MR. WEBB: Is this a convenient  
24 stopping time or do you want to continue?

25                   MR. ROSENBLATT: This is

0095

1                   M. Szymanczyk  
2 convenient.

3                   (A recess was taken.)

4 CONTINUED EXAMINATION

5 BY MR. ROSENBLATT:

6                   Q. Has Philip Morris ever taken action  
7 against a retailer who consistently sold to  
8 underaged kids?

9                   A. Well, yes, I would say that's true.

10                  Q. What kind of action?

11                  A. Well, we have a program we put in  
12 place, I believe it was 1995, where relative to  
13 our merchandising program that some retailers  
14 contract with us on in the event that we had fined  
15 and conviction information that allowed us to have  
16 a legal right to do something that we would  
17 institute a series of penalties based on whatever  
18 the infractions were and the number of the  
19 infractions.

20                  Q. Has that ever happened?

21                  A. Yes.

22                  Q. About how many times?

23                  A. Not a tremendous number. I believe  
24 it's between 150 and 200 times. I don't remember  
25 the exact number, but it's right in that range.

0096

1                   M. Szymanczyk

2                   Q. Where retailers have actually been  
3 convicted of something?

4                   A. Retailers had a payment withheld  
5 from them by us. When they're convicted they get  
6 fined by the government, but in addition they get  
7 a payment withheld by us because a federal  
8 authority has provided us with information that  
9 that conviction took place in which case we  
10 institute a penalty within our program.

11                  Q. But you don't cut the retailer off  
12 in the future?

13                  A. We don't supply retailers. In  
14 other words, we sell products to distributors so  
15 we have no control over what retailers buy.

16                  Q. Would you have the power to tell  
17 your distributors don't deal with this particular  
18 retailer?

19                  A. I don't believe legally we would  
20 have the power to do that, no.

21                  Q. How many distributors would you  
22 figure Philip Morris has nationwide?

23                  A. In the range of about a thousand.



24 These are independent companies. In other words,  
25 they are distributors of all cigarettes, not just  
0097

1 M. Szymanczyk  
2 Philip Morris cigarettes and other products as  
3 well.

4 Q. I was looking over my notes and I  
5 was a little confused about something you said  
6 when we were on the subject of environmental  
7 tobacco smoke. I recall you making a distinction,  
8 I thought, between adults and kids. Were you  
9 saying that you do believe or you don't believe  
10 that secondhand smoke causes disease in children  
11 or infants?

12 A. I believe what I said was there is  
13 some -- I believe as I recall there is some  
14 evidence of some issues related to environmental  
15 tobacco smoke and kids. I can't tell you that I  
16 could remember exactly what they are, but that I  
17 think as a piece of general information and as a  
18 good practice, it's wise to avoid having kids  
19 exposed to secondhand smoke.

20 Q. Do you believe that secondhand  
21 smoke causes diseases in children or infants?

22 A. I don't believe I am capable or  
23 competent to answer that question.

24 Q. When you give an answer like that,  
25 I just want to be sure we're basically on the same  
0098

1 M. Szymanczyk  
2 wavelength. Obviously you're not a doctor, you're  
3 not a medical doctor and you're not a scientist,  
4 but I'm asking you in the sense of whether you  
5 have educated yourself on the subject by reading,  
6 by talking to people you consider knowledgeable to  
7 put yourself in a position to have an opinion. As  
8 I understand you have not done that on the issue  
9 of secondhand smoke?

10 A. That wouldn't be true.

11 Q. Okay.

12 A. I have reviewed actually or had it  
13 reviewed for me by scientists who could explain it  
14 to me some of the information and conclusions from  
15 some of the publically done research on  
16 environmental tobacco smoke.

17 It's my understanding that the  
18 conclusion of that research is there hasn't been a  
19 demonstration or a consensus among scientists from  
20 that research that there is any meaningful  
21 statistical correlation between environmental  
22 tobacco smoke and the disease.

23 However, as I recall, there are  
24 some, I believe, issues relative to environmental  
25 tobacco smoke and, for example, asthma in  
0099

1 M. Szymanczyk  
2 children, but I can't recall specifically what  
3 they are.

4 The conclusion though I think I  
5 have drawn from this is a correct one, it's  
6 probably wise to avoid having kids in contact with  
7 environmental tobacco smoke.

8 Q. Is it wise because it would be

9 uncomfortable for the kids to be exposed or is it  
10 wise because they could get sick because of the  
11 exposure?

12 A. Now you're asking me a question I  
13 really can't answer.

14 Q. Is it fair to say that based on  
15 what you have been told and what you have read and  
16 what you learned on environmental tobacco smoke,  
17 that you don't believe it's been scientifically  
18 established that environmental smoke is even a  
19 risk factor for disease?

20 A. I would say based on what I have  
21 seen on the subject, there isn't a scientific  
22 consensus on that subject at this point.

23 Q. Has Philip Morris consulted with  
24 bankruptcy lawyers in connection with the Engle  
25 case?

0100

1 M. Szymanczyk

2 MR. WEBB: I'm going to object on  
3 the grounds of lawyer/client privilege and  
4 instruct the witness not to answer the  
5 question.

6 MR. ROSENBLATT: Which leads me to  
7 believe the answer is yes.

8 Q. Do you have a number in mind that  
9 if a jury returned a verdict in the Engle case  
10 where you would say that well, we can't pay that  
11 number and, therefore, we have to consider  
12 bankruptcy? Do you have a number in mind?

13 A. No, I can't say that I concluded a  
14 number in mind on the terms that you have  
15 described.

16 Q. Just for the sake of a hypothetical  
17 question. If the jury in the Engle punitive  
18 damage phase returned a punitive damage award in  
19 the amount of 50 billion dollars, Philip Morris  
20 could handle that, couldn't it?

21 A. No.

22 MR. WEBB: Are you asking 50  
23 billion dollars against Philip Morris?

24 MR. ROSENBLATT: Fifty billion  
25 against all the companies.

0101

1 M. Szymanczyk

2 Q. Philip Morris could handle that,  
3 couldn't it?

4 A. I don't believe that is correct.

5 Q. What would happen? Obviously you  
6 have considered scenarios. One scenario is that  
7 you do very well and the verdict is very low and  
8 another scenario is that the verdict from your  
9 standpoint is very high, so if there was a 50  
10 billion dollar verdict against the defendants in  
11 the Engle class action punitive damage phase, what  
12 action would you take?

13 MR. WEBB: I'm going to object to  
14 the form of the question since I believe  
15 punitive damages can't be joint and  
16 several, they have to be against each  
17 company. I'm just objecting to the form  
18 of the question as being confusing. We  
19 would not be paying a verdict for another

20 company. I'm confused by the question.  
21 Q. If there were a 50 billion dollar  
22 verdict that had to be paid by Philip Morris, what  
23 would Philip Morris do? Would you go into  
24 bankruptcy court?

25 A. That was entered into a final

0102

1 M. Szymanczyk  
2 judgment?

3 Q. Yes.

4 A. And became due and payable within  
5 30 days, which would be the case I guess under  
6 Florida law? I don't know what we would do. To  
7 my knowledge we wouldn't be able to pay it.

8 Q. First of all, you know there is no  
9 chance of any verdict having to be paid within 30  
10 days. If there was an adverse verdict, now that  
11 you have favorable Florida legislation you could  
12 easily handle the bond and you could appeal.

13 A. I was referring to the at the end  
14 of the process. If there was a judgement due of  
15 50 billion dollars against Philip Morris, I don't  
16 know what we would do.

17 Q. I'm confused. You've got a 246  
18 billion dollar settlement with the states and  
19 obviously you're handling that so why couldn't  
20 Philip Morris handle another 50 billion dollars  
21 added on top of that?

22 A. Well, the 246 billion dollars,  
23 which is actually 25 years worth of payments due  
24 to the states of which we're paying approximately  
25 half, is collected by us over the course of that

0103

1 M. Szymanczyk  
2 25-year period. We would not be able to pay this  
3 money if it was due in 30 days or in two years for  
4 that matter. We wouldn't be able to pay that  
5 money.

6 The structure of that agreement was  
7 such that it allows the companies to collect that  
8 money over time.

9 Q. So obviously if the verdict was 100  
10 billion dollars in the Engle case, if the class  
11 was agreeable to pay out over time, you could  
12 handle that, a pay out over a number of years?

13 MR. WEBB: I'm objecting to the  
14 form of the question as assuming something  
15 that is not consistent with Florida law.  
16 He can answer.

17 A. No, I don't think that that's true.

18 Q. Why not?

19 A. As I understand the law  
20 compensatory damages have to be paid before  
21 punitive damages and so the compensatory damages  
22 relative to this case, if there is a punitive  
23 damage award and the potential compensatory  
24 relative to all the other lawsuits this company  
25 faces I think preclude what you're saying or

0104

1 M. Szymanczyk  
2 suggesting from happening because if you have  
3 punitive damages of that size, particularly in  
4 this case, you're going to have compensatory

5 damages that go before that.

6 Q. So your understanding is before  
7 Philip Morris would be liable to pay any punitive  
8 award irrespective of what the jury does, you  
9 would have to have thousands upon thousands of  
10 individual trials first determining compensatory  
11 damages?

12 MR. WEBB: I object to the form of  
13 the question. It calls upon him to  
14 interpret Judge Kaye's --

15 A. My general understanding is in a  
16 lawsuit punitive damages are only determined after  
17 compensatory damages are determined and  
18 compensatory damages, because they're there in all  
19 of these lawsuits, they will be first.

20 Compensatory damages, even from  
21 this case, represent such a substantial potential  
22 burden that I think it would be unlikely what  
23 you're proposing would be something that could be  
24 done.

25 Q. Your understanding is that in terms  
0105

1 M. Szymanczyk  
2 of the Engle class action there would have to be  
3 thousands upon thousands of individual trials  
4 dealing with compensatory damages before Philip  
5 Morris would have to pay any punitive damages?

6 A. My understanding in any trial, any  
7 trial including that trial, that compensatory  
8 damages take place have to be ruled on before  
9 punitive damages.

10 Q. You got that understanding from  
11 your lawyers I assume?

12 MR. WEBB: I object to the form of  
13 the question and instruct the witness not  
14 to answer the question concerning any  
15 conversation with his lawyers as being  
16 lawyer/client privilege.

17 MR. ROSENBLATT: I'm not asking for  
18 the conversation. Does he understand it  
19 comes from his lawyers or another source.  
20 If it comes from another source there  
21 would be no basis to object.

22 MR. WEBB: If it's communications  
23 with his lawyers I object and instruct him  
24 not to answer that question. If you want  
25 to ask the question as to whether he got  
0106

1 M. Szymanczyk  
2 that understanding from nonlawyers, I will  
3 not object to the question.

4 Q. Did you get that understanding from  
5 nonlawyers?

6 A. No.

7 Q. What is your company worth? Put a  
8 dollar figure on it.

9 A. I think it's a tough thing to do  
10 these days.

11 Q. Because everything is so  
12 complicated?

13 A. Because there is a significant  
14 amount of unpredictability about the future in the  
15 company so I think that makes it tough to use

16 traditional means to value a company. I could  
17 tell you what our net worth is, but I think it's a  
18 tough question to answer.

19 Q. Well, what are the traditional  
20 means of valuating the worth of the company?

21 A. Net worth is one way. If a company  
22 has common stock, which this one doesn't, my  
23 company doesn't have common stock, but if it does,  
24 that's another way to value a company based on its  
25 market value in the marketplace. In the case

0107

1 M. Szymanczyk  
2 where a company has a predictability going forward  
3 circumstances you could use earnings, some  
4 multiple earnings as a way to get value, but  
5 that's a little more difficult in this  
6 circumstance because you have to subtract out  
7 potential future liabilities. Those are typical  
8 ways to value companies.

9 Q. What is the net worth of your  
10 company?

11 A. I believe it's about 7.1 billion  
12 dollars.

13 Q. What is the market value, the same  
14 thing or different?

15 A. Market value would really be built  
16 based on having common stock and we don't have  
17 them.

18 Q. Has Philip Morris had a corporate  
19 spokesperson concerning media questions or  
20 questions from the public dealing with the master  
21 settlement agreement and if so, who has that  
22 spokesperson been?

23 A. Well, I'm sure we have made public  
24 statements. I can't remember if we had a specific  
25 corporate spokesperson with respect to that. I

0108

1 M. Szymanczyk  
2 think we may have issued a press release on that.

3 Q. Are you familiar with the claims in  
4 the Engle case of the three class representatives  
5 who just went to trial which resulted in the  
6 second jury verdict last month, Mary Farnan, Angie  
7 Dellavecchia, Frank Amodeo, what diseases those  
8 individuals had and what claims were being made?

9 A. I'm reasonably aware. I have  
10 reviewed it, but it's been some time since I  
11 looked at it.

12 Q. Are you aware in all three  
13 instances the lawyers representing the tobacco  
14 companies took the position that cigarette smoking  
15 was not the cause of that person's lung cancer or  
16 throat cancer?

17 MR. WEBB: I'm going to object on  
18 the grounds there is a motion to eliminate  
19 dealing with the relevancy of this type of  
20 evidence regarding the Engle trial lawyers  
21 litigation strategy. I want the record to  
22 reflect I'm not waiving my objection. The  
23 witness may answer. I will have a  
24 continuing objection to this line if  
25 that's okay with you.

0109

1 M. Szymanczyk  
2 MR. ROSENBLATT: Sure.  
3 A. I'm reasonably aware, although not  
4 specifically aware, of the counsel for us in this  
5 case is given the responsibility for determining  
6 how best to proceed through the case and what is  
7 appropriate in terms of what we do and so I left  
8 that to them. So I can't tell you specifically  
9 that I know what the position they have taken is  
10 with respect to each one of these plaintiffs.  
11 Q. It's true in general, isn't it,  
12 that you know in all three of those cases that  
13 Philip Morris did not agree that cigarette smoking  
14 caused the disease, it didn't come before the jury  
15 and say, right, cigarette smoking causes the  
16 throat cancer or the lung cancer, but there is  
17 another reason why we shouldn't be held liable?  
18 A. I'm reasonably aware of it.  
19 Q. That they did not do that?  
20 A. I believe that they, as I recall  
21 the position they took, was in fact relative to  
22 causation was that it may not have, yes.  
23 Q. When you say that it's your view  
24 and that you have told your children that  
25 cigarette smoking is dangerous to your health,  
0110

1 M. Szymanczyk  
2 your belief is that cigarette smoking is dangerous  
3 to the health of anyone who smokes, of individuals  
4 who smoke, not dangerous in the abstract, but  
5 dangerous to the health of individual smokers?  
6 A. What I've said is that I believe  
7 that smoking is bad for your health, in general  
8 bad for your health.  
9 Q. Bad for your health in the sense  
10 that it can cause diseases?  
11 A. Well, let's go back to from a  
12 company point of view. Again, I'm not a  
13 scientist, but I believe it would be fair to say  
14 that my scientists would concur with the statement  
15 that smoking can cause disease in some people,  
16 that that is an area where there is scientific  
17 consensus and that they would agree with that.  
18 Because I'm not a doctor or a scientist, I simply  
19 operate on the assumption personally that smoking  
20 is bad for your health. That's what I grew up  
21 with.  
22 Q. Do you believe that smoking does in  
23 fact cause disease in some people, not that it  
24 can, but that it in fact does cause disease in  
25 some people?  
0111

1 M. Szymanczyk  
2 A. I think that it's a case by case  
3 basis and I think it's logical to assume that if  
4 the statistics, the statistical data, says there  
5 is a strong amount of statistical evidence between  
6 smoking and disease, like lung cancer, that you  
7 have to conclude that there are some people where  
8 smoking has certainly played a role in causing  
9 that disease. I think that's a fair assumption  
10 from the statistics.  
11 Q. Played a role along with other

12 factors?

13 A. Could be.

14 Q. Will you acknowledge as you sit  
15 here today that there are people that have smoked  
16 your products over the years who have developed  
17 cancer and heart disease and emphysema and chronic  
18 obstructive pulmonary disease as a direct result  
19 of smoking your cigarettes?

20 MR. WEBB: I'm objecting to the  
21 compound form of the question. There are  
22 multiple different diseases included in  
23 that question.

24 A. Maybe we could just pick one so I  
25 could answer your question if that would be okay.

0112

1 M. Szymanczyk

2 Q. Okay.

3 A. Take lung cancer.

4 Q. Will you acknowledge as you sit  
5 here today that people, individuals who have  
6 smoked your cigarettes, have developed lung cancer  
7 as a direct result of smoking your cigarettes and  
8 had they not smoked your cigarettes, they would  
9 never have developed lung cancer?

10 A. I guess I can acknowledge that  
11 based on the statistical evidence the possibility  
12 exists that the statement you have made is true.  
13 I can't acknowledge that I know for a fact that  
14 it's true.

15 Q. Are there any restrictions in the  
16 master settlement agreement on point of sale  
17 advertising?

18 A. Yes, there are.

19 Q. What are they?

20 A. Well, the restriction is in outdoor  
21 signage restriction, which says that you need  
22 outdoor signs either by itself or in combination  
23 with other signs. I think the language is as a  
24 mosaic could not be any larger than seven square  
25 feet.

0113

1 M. Szymanczyk

2 Q. What is the Marlboro trademark  
3 worth?

4 A. I think that's kind of asking what  
5 the company is worth. It's very hard to put a  
6 number on it today because Marlboro is involved in  
7 a lot of litigation and future litigation.

8 Q. Is there a more valuable trademark  
9 or more widely recognized trademark in the world  
10 than Marlboro?

11 A. Certainly more valuable at this  
12 point. The market cap value of Coca-Cola  
13 certainly would be of significant more value.

14 Q. What was the budget in the year  
15 1999 for all youth prevention programs?

16 A. For our youth program prevention  
17 department our budget was just a little over 100  
18 million dollars.

19 Q. It's true, is it not, that the  
20 entire market program to sell cigarettes on behalf  
21 of Philip Morris is in excess of one billion  
22 dollars?

23 A. It would depend on what you're  
24 talking about in terms of marketing program. The  
25 marketing budget would be very large if you

0114

1 M. Szymanczyk  
2 include what is called price reduction, which is a  
3 substantial amount and actually the primary amount  
4 of spending in marketing today. It's kind of a  
5 hard thing to describe. If you use the totality,  
6 if you use the totality of the budget and the way  
7 it's put together it would be large.

8 Q. Around a billion dollars?

9 A. More.

10 Q. A year?

11 A. Yes.

12 Q. In terms of your mailings and your  
13 advertising, when people fill out forms and they  
14 send in stuff or merchandise or anything else, how  
15 do you verify that they're over 21?

16 A. The way we do that is they send  
17 in -- there is a verification process that we  
18 use. They send the form which requires them to  
19 verify and they have to send in a copy of their  
20 identification, government ID.

21 Q. Government ID?

22 A. Yes, like your driver's license.

23 Q. In any country where Philip Morris  
24 products are sold outside of the United States,  
25 has Philip Morris ever put on any warning which

0115

1 M. Szymanczyk  
2 was not required by law in those particular  
3 countries?

4 A. I don't know. I don't have  
5 anything to do with the international business, so  
6 I don't know how to answer that.

7 Q. "Veni vidi vici," do those words  
8 mean anything to you?

9 A. Lawyers take latin.

10 Q. Not in this country.

11 A. I think I came, I saw, I conquered.

12 Q. Right. What do those words mean to  
13 you as the CEO of Philip Morris, if anything?

14 A. Nothing.

15 Q. Would it surprise you to learn  
16 those words appear on the package of your  
17 cigarettes?

18 A. No, I think they may have. I can't  
19 remember. Do they? Because I don't know. It's  
20 pretty hard to read.

21 Q. It kind of proves people don't read  
22 warning labels.

23 A. That's not a warning label.

24 Q. People don't read what's on the  
25 package of cigarettes.

0116

1 M. Szymanczyk

2 A. I don't buy that. I don't think  
3 that one flies.

4 Q. You've never read it?

5 A. But that's not a warning label.

6 Q. But you've never read it?

7 A. No, I didn't read that.



8 Q. Do you know whether those words  
9 appear on Philip Morris products other than  
10 Marlboro?  
11 A. I do not.  
12 Q. What does that mean in that  
13 context?  
14 A. You got me.  
15 Q. I came, I saw, I conquered, what  
16 has Philip Morris conquered, the market?  
17 A. I have no idea. I don't know what  
18 it means.  
19 Q. Have you done analysis or had  
20 anyone do analysis as to how often Philip Morris  
21 can keep raising the price of cigarettes until you  
22 start losing money in the sense that a lot of  
23 people simply won't buy because of the price?  
24 A. No, not that I'm aware of.  
25 Q. Are you aware with respect to the  
0117

1 M. Szymanczyk  
2 tobacco analysts -- first of all, what is your  
3 understanding of what a tobacco analyst is?  
4 A. I know what an analyst is. They're  
5 all the same, it depends on what industry.  
6 Q. What they're analyzing.  
7 A. I guess they analyze companies and  
8 make recommendations with respect to those  
9 companies' stock.  
10 Q. What is your understanding as to  
11 the consensus that exists among tobacco analysts  
12 as to whether they are recommending to investors  
13 that they purchase Philip Morris company stock?  
14 A. Could you read that back.  
15 (The requested portion was read.)  
16 A. I'm not aware that there is a  
17 consensus among them, but they have, many of them,  
18 recommended that the company stock is something  
19 that is what they described as a high risk buy and  
20 some recommend hold. I don't know if there are  
21 any currently recommending sell. I don't think  
22 there are, but I wouldn't swear to that.  
23 Q. Is nicotine a drug?  
24 A. Yes, I believe it's described as a  
25 drug.  
0118

1 M. Szymanczyk  
2 Q. Why has Philip Morris opposed FDA  
3 regulation of this drug, on what grounds?  
4 MR. WEBB: I'm going to object on  
5 the grounds that there is a motion to  
6 eliminate pending regarding the right of  
7 Philip Morris to pursue regulatory issued  
8 constitutionally protected rights. That  
9 motion has not been ruled upon. The  
10 witness may answer the question as long as  
11 you agree I have a continuing objection  
12 and I don't waive anything.  
13 MR. ROSENBLATT: Yes.  
14 A. Philip Morris has opposed the  
15 regulation of cigarettes by the FDA on the basis  
16 that the FDA doesn't have authority to regulate  
17 cigarettes and on the basis that cigarettes are  
18 not a medical device which was proposed as a

19 regulatory scheme by the FDA.  
20 Q. I think you will agree that health  
21 groups, the public health community, don't want  
22 young people to smoke because they don't want them  
23 to become addicted to the drug and a product that  
24 causes terrible disease. My question to you is:  
25 Why don't you want young people to smoke?

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1 M. Szymanczyk

2 A. I don't want young people to smoke  
3 for three reasons. First, I think it's plain  
4 wrong and these are kids, they're not adults.  
5 Second, it's illegal in every state  
6 of the union. It's illegal for kids to possess or  
7 purchase cigarettes.

8 Third, it's bad for my business for  
9 kids to be buying cigarettes.

10 Q. Why is it bad for your business?

11 A. Because when people accuse us of  
12 selling our product to kids when we all know  
13 that's wrong, we know it's illegal, it puts us in  
14 the kind of circumstances you and I are having a  
15 conversation like we're having today, which isn't  
16 the business we're in and it has a tremendous  
17 negative effect on this business.

18 Q. You would agree, wouldn't you, as a  
19 practical matter the source by which tobacco  
20 companies, including Philip Morris, replace  
21 smokers who die or smokers who quit is from the  
22 young since it's an established fact that the vast  
23 majority of new smokers are teenagers or younger?

24 MR. WEBB: Object to the form.

25 Q. Is that something you accept or

0120

1 M. Szymanczyk

2 reject?

3 MR. WEBB: I object to the form of  
4 the question. You may answer.

5 A. I reject the premise that we have  
6 any interest in replacing smokers or recruiting  
7 new smokers in its entirety.

8 Q. That's not what I asked you. What  
9 I asked you was regardless of what your interest  
10 or intent may be, the fact of the matter is you  
11 know as a fact that the source of replacement  
12 smokers by virtue of data from the U.S. government  
13 and independent scientific and medical source and  
14 surgeon general reports over the years is that the  
15 overwhelming majority of new smokers come from the  
16 age group of teenagers or younger, do you accept  
17 that fact or reject it?

18 A. I accept the fact that there are  
19 underage smokers that become adult smokers.

20 Q. Do you accept the fact that the  
21 majority of new smokers, when you take any year in  
22 American history, the year '98, '99, 2000, that it  
23 is an established fact that if a statistical  
24 survey were done and you asked when did you start  
25 smoking, that the great majority of new smokers

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1 M. Szymanczyk

2 are teenagers or younger or do you think there are  
3 lot of people that start smoking in their 20s or

4 30s?

5 A. I have read articles that state  
6 what you say. I don't have any research in the  
7 company that would document that so I don't know,  
8 but I do know that there are kids that start  
9 smoking and that that's an issue for this business  
10 that we need to, with others, deal with.

11 Q. You certainly don't mind if your  
12 advertising attracts adult nonsmokers to begin  
13 smoking or are you telling us that you don't want  
14 them either?

15 A. No, I don't particularly want to do  
16 that. In fact, the way I view this business is  
17 that our marketing efforts are designed to build  
18 our share of the market and I view this as a  
19 declining business that will likely continue to  
20 decline and that our job is to try to grow our  
21 return based on operating effectively in a  
22 declining business. That's the way I view this  
23 business.

24 Q. You have no way of knowing, do you,  
25 the number of nonsmokers, adult or non-adult, who

0122

1 M. Szymanczyk  
2 begin smoking as the result of advertising and  
3 promotion, do you? There is no way for you to  
4 know that?

5 A. In the absolute it would be  
6 difficult to know that for any product, but as I  
7 think the general experience in consumer package  
8 groups is in a mature category advertising is of  
9 interest to people who have participated in the  
10 category and people have little interest who have  
11 made the decision not to participate in a category  
12 any that's how advertising seems to work for  
13 almost every consumer package business.

14 Q. You are aware that in the Engle  
15 litigation the lawyers for Philip Morris and the  
16 other companies put on so-called advertising  
17 experts who told the jury in effect that cigarette  
18 advertising is not designed to, in fact does not,  
19 just like you've said, attract nonsmokers to start  
20 smoking.

21 The so-called advertising experts  
22 testified to the effect just as you have within  
23 the last two or three minutes that the whole  
24 purpose of advertising and promotion is to get the  
25 Winston smoker or the Camel smoker to switch to

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1 M. Szymanczyk  
2 your brands.

3 Is it not absolutely clear to you  
4 as you read the two verdicts in the Engle case  
5 that the Engle jury rejected that testimony and  
6 didn't believe that testimony or do you think it's  
7 an open question, maybe they believed it.

8 MR. WEBB: I'm going to object to  
9 the form of the question asking him to  
10 speculate as to what the jury concluded or  
11 relied upon to reach their conclusion.  
12 You may answer the question.

13 A. I don't know the specific  
14 deliberations of the jury. I can tell you that my

15 experience both prior to this company, coming to  
16 work for this company and other package goods  
17 categories and within this company, is that  
18 advertising at best is a difficult proposition for  
19 communicating to people and that its impact is  
20 primarily upon people who have already made a  
21 decision to participate in a category.

22 Q. I've taken an informal, what I  
23 considered to be a very scientific pole of very  
24 prestigious physicians and I have asked them what  
25 does it mean to you "never let the goody-two-shoes  
0124

1 M. Szymanczyk  
2 get you down" and unanimously they've all said  
3 what it obviously means is don't listen to anyone  
4 that tells you not to smoke, do your own thing,  
5 you feel like smoking, smoke, be rebellious.  
6 As I have understood your  
7 testimony, you're telling me that that's an  
8 absolutely off the wall interpretation of the very  
9 innocent statement "never let the goody-two-shoes  
10 let you down"?

11 A. The purpose of Virginia Slims  
12 advertising is it's a brand that has a very mature  
13 profile of smokers and even in the youngest adult  
14 age group it has virtually no business at all, so  
15 I'm a bit confounded by anybody's belief that  
16 Virginia Slims is an attractive brand to kids, but  
17 as a practical matter, Virginia Slims advertising,  
18 because it is a cigarette that is designed for  
19 women, is focused on women, adult women, who  
20 smoke, that smoke mainstream brands and in  
21 particular mainstream competitive brands that men  
22 smoke as well by offering them a cigarette that is  
23 designed specifically for women. That's the  
24 fundamental concept of the brand.

25 Q. Did you go to the annual  
0125

1 M. Szymanczyk  
2 stockholders meetings?

3 A. Sometimes, yes.

4 Q. Did you go to the one this year?

5 A. Yes.

6 Q. 1999?

7 A. Yes, it was in 2000. Did I go last  
8 year, is that your question?

9 Q. That's my question.

10 A. Yes.

11 Q. In what specific print media does  
12 Philip Morris spend most of its advertising  
13 revenue, People magazine, Sports Illustrated?

14 A. I don't know if I can answer that  
15 question.

16 Q. Who would you call at Philip Morris  
17 to get the answer or would you call an agency?

18 A. We run a media plan which runs an  
19 array of qualified magazines so I don't know that  
20 there is an answer that meets the criteria you  
21 just asked which is a primary one. I don't think  
22 there is a primary one.

23 Q. "Find your own voice," does that  
24 ring a bell to you?

25 A. "Find your voice"?

0126

1 M. Szymanczyk

2 Q. "Find your voice."

3 A. Yes.

4 Q. Where is that from?

5 A. That's the Virginia Slims  
6 advertising campaign.

7 Q. What does that mean "find your  
8 voice"? How does "find your voice" persuade a  
9 woman adult smoker of another brand to switch to  
10 Virginia Slims? Why is that a reason for  
11 switching?

12 A. It simply says if you're a woman  
13 smoking, smoking mainstream brands, you can set  
14 yourself apart as a women by smoking Virginia  
15 Slims which is made expressly for women.

16 Q. You know that a lot of smokers have  
17 developed throat cancer and lost their voices as a  
18 result of cigarettes. Don't you find that  
19 offensive, a person reading that, a smoker whose  
20 now got a voice box find your voice, don't you  
21 find that an offensive kind of ad?

22 A. Well, I haven't thought about it  
23 that way.

24 Q. Well, think about it.

25 A. I'm sure --

0127

1 M. Szymanczyk

2 Q. They would.

3 A. Yes.

4 Q. Has Philip Morris raised the price  
5 of cigarettes yet in the year 2000?

6 A. Yes, we did.

7 Q. By how much?

8 A. I don't remember exactly.

9 Q. How much money does Philip Morris  
10 plan to spend in 2000 on stock buy backs?

11 A. My company doesn't do any stock buy  
12 backs.

13 Q. How about Philip Morris companies?

14 A. I don't know.

15 Q. Do you know if Philip Morris  
16 companies intend to raise its stock dividend this  
17 year?

18 A. I don't know.

19 Q. Do you know if it raised it's stock  
20 dividend last year, in '99?

21 A. Yes, I believe it did.

22 Q. What is your company's currently  
23 unused line of credit?

24 A. My company doesn't have a line of  
25 credit.

0128

1 M. Szymanczyk

2 Q. Philip Morris companies does?

3 A. I'm not sure.

4 Q. Do you know what it is, their  
5 unused line of credit?

6 A. I'm not sure if they have one.

7 Q. I have heard in the courtroom that  
8 one of the main presentations of the tobacco  
9 companies in the punitive damage phase of the  
10 Engle class action is going to be to tell the jury

11 that we've changed, we're different from what we  
12 used to be, so I want to know all the ways that  
13 you think Philip Morris has changed from the way  
14 you used to be.

15 I'm just talking about things that  
16 are not required under the master settlement  
17 agreement because that obviously speaks for it.

18 MR. WEBB: I object to the form of  
19 the question. You may answer.

20 A. It's my intention to tell the jury  
21 how we run the business today, so I'm going to be  
22 talking about the things that we do in terms of  
23 how we operate the business today. I don't really  
24 know how to describe for you what's changed. I  
25 think the jury will make the decision as to what

0129

1 M. Szymanczyk  
2 they perceive what is different.

3 Q. How do you run the business today?  
4 Give me a preview of what you're going to tell the  
5 jury.

6 A. My intention is to talk to the jury  
7 about the master settlement agreement. I will be  
8 talking to the jury about some of the things that  
9 we're doing in the area of youth smoking  
10 prevention. I will be talking to the jury about  
11 some of the things we're doing in the area of  
12 product development. I will be talking to the  
13 jury about our website. I will talk to the jury,  
14 as I already told you, about the effect punitive  
15 damages has on the company.

16 Q. Those are basically the areas  
17 you're going to testify about?

18 A. I will likely give them a brief  
19 background on myself.

20 Q. Beyond what you told me today?

21 A. No, I think I covered it pretty  
22 much. I think that pretty well covers the areas  
23 that I will be talking about.

24 Q. Do you think that Philip Morris in  
25 terms of the way you run the business today --

0130

1 M. Szymanczyk

2 A. One other area that I will also be  
3 talking about is our mission statement and our  
4 values.

5 Q. You think the way Philip Morris  
6 operates today that you're honest with the  
7 American people?

8 A. I believe we're honest with the  
9 American people, yes.

10 Q. If you were honest with the  
11 American people, which you're not, but if you  
12 were, in the youth prevention advertising that you  
13 do, you would say to the kids don't smoke because  
14 you can get addicted to smoking and if you smoke,  
15 you can develop a disease which will ruin your  
16 life and kill you. That would be honest. You  
17 never say anything like that. You just say it's  
18 an adult decision or listen to your parents, but  
19 you never say to these kids don't smoke because  
20 smoking can kill you, do you?

21 MR. WEBB: I'm going to object to

22 the argumentative form of the question.  
23 You may answer.  
24 A. Well, we provide on the commercial  
25 a health consequence warning, but the intent of

0131

1 M. Szymanczyk  
2 our commercials is based upon a lot of research  
3 done outside the company by specialists and people  
4 who have studied this area to focus on what has  
5 been identified as the primary issue in terms of  
6 how and when kids start to smoke and that's peer  
7 pressure. So our advertising is designed against  
8 that.

9 There are a variety of other  
10 messages on the subject that are also portrayed,  
11 but we believe that we have chosen one and one  
12 that is the primary issue and that our advertising  
13 is effective relative to that communication.

14 Q. Isn't it fair to say that the  
15 reason you have told your three sons not to smoke  
16 is that as a father you don't want them to get  
17 cancer and you understand that there's a chance  
18 that by smoking they'll get cancer or heart  
19 disease, that's why you have told your kids not to  
20 smoke, you don't want their lives to be cut short  
21 over that, isn't that true?

22 A. I told my children that I don't  
23 think they should smoke because as I answered your  
24 question already, I believe it's bad for their  
25 health and that's why I've told them that.

0132

1 M. Szymanczyk  
2 Q. Okay. Is this a fair statement in  
3 your opinion, that under the master settlement  
4 agreement the better Philip Morris does, the  
5 better the states will do or put another way, the  
6 worse Philip Morris does in terms of sales, the  
7 worse the states will do in terms of the money  
8 they receive?

9 MR. REILLY: Object to the form of  
10 the question and they're compound and they  
11 are not necessarily consistent statements.

12 A. I'm not sure that's a true  
13 statement.

14 Q. Why not? What's not true about it?

15 A. The master settlement agreement is  
16 structured based on the performance of all of the  
17 participants, not just based on the performance of  
18 Philip Morris.

19 Q. As a direct result of the master  
20 settlement agreement, have there been any layoffs  
21 at Philip Morris?

22 A. Yes, I would say that the master  
23 settlement agreement has been a causal factor in  
24 us having to close a factory, our primary reason  
25 why.

0133

1 M. Szymanczyk  
2 Q. Which factory was that?  
3 A. A factory in Louisville, Kentucky.  
4 Q. Which manufactured cigarettes?  
5 A. Yes.  
6 Q. If you were to look at the 30

7 highest paid individuals employed by your company,  
8 have any of them taken a pay cut since the  
9 agreement, since the master settlement agreement?

10 A. I don't know.

11 Q. Nothing comes to mind? Generally  
12 speaking, your experience, would you agree that  
13 your experience with Philip Morris has been the  
14 experience with other high level executives in the  
15 sense that absent being fired or absent leaving  
16 the company, people that have stayed with the  
17 company their salaries go up, they don't go down,  
18 they go up?

19 A. I can't speak to the specific  
20 question that you asked me regarding 30 people,  
21 but in terms of your general question, I would say  
22 that the company has attempted to keep its  
23 compensation programs competitive relative to the  
24 rest of the marketplace in order to retain its  
25 people.

0134

1 M. Szymanczyk

2 Q. And the result of that is that  
3 salaries of high level executives go up by year?

4 A. I think compensation for all people  
5 including our hourly employees in our factories  
6 has gone up.

7 Q. In spite of the master settlement  
8 agreement?

9 A. I would say that because of the  
10 litigation and the impact it's had on the company  
11 we have had to make sure that our compensation was  
12 competitive.

13 Q. This is the youth smoking  
14 prevention stuff, this is what, an example of your  
15 television ads on that subject?

16 MR. WEBB: For the record, you're  
17 showing him documents from the group I  
18 gave you this morning?

19 MR. ROSENBLATT: Correct. That's  
20 what I'm going through right now, the  
21 group of documents that you provided me  
22 pursuant to some numbers on Exhibit-A.

23 A. This is a copy of a brochure from  
24 our Youth Smoking Prevention Department.

25 Q. Who does that brochure go to?

0135

1 M. Szymanczyk

2 A. It would be a brochure used as we  
3 work with other constituencies, education groups  
4 and other community action groups to develop  
5 programs.

6 Q. Has that brochure, to your  
7 knowledge, ever gone to your database, the  
8 millions of smokers on your database, mailed to  
9 them?

10 A. Not to my knowledge, no.

11 Q. This is part of what you intend to  
12 testify to about the jury, you have a blowup of  
13 this to put on a screen to show the jury our core  
14 values, our mission. So when you referred earlier  
15 to your mission statement, this is what you were  
16 talking about?

17 A. Yes.



18 Q. These two pages or just our mission  
19 page?  
20 A. No, I said our mission and our core  
21 values and it's those two things.  
22 Q. Kind of integrated?  
23 A. Well, there is a mission and core  
24 values and they're connected to each other  
25 certainly.

0136

1 M. Szymanczyk  
2 Q. What do you mean in your mission  
3 statement "protect the rights of adults who choose  
4 to smoke"?  
5 A. Well, I think we believe that it is  
6 an adult choice to decide to smoke and that people  
7 who choose to smoke should have the right to do  
8 so.  
9 Q. Then in your mission statement you  
10 say meet or exceed the legal age regulatory  
11 requirement that govern our products and  
12 business. In terms of warnings, have you ever  
13 exceeded any legal age regulatory requirement?  
14 MR. WEBB: Objection. You may  
15 answer.  
16 A. The information we have on our  
17 website exceeds any requirement that we have.  
18 Q. Who is the author of the core  
19 values and mission statement?  
20 A. I'm the author of the mission  
21 statement. The core values were authored by my  
22 executive team along with myself with some  
23 additional input from our employees.  
24 Q. How would you answer the criticism  
25 that this is a lot of vague rhetoric, it's just

0137

1 M. Szymanczyk  
2 rhetoric, it's just broad, general statements with  
3 a lot of highfalutin words, a lot of sound and  
4 furry signifying nothing?  
5 A. The mission statement,  
6 Mr. Rosenblatt, is a goal. The way you measure  
7 yourself is relative to progress that you're  
8 making toward that goal, so we have set that as a  
9 high standard that we wish to achieve.  
10 Values represent the behaviors to  
11 guide the organization and we have integrated  
12 those into the way we manage our organization.  
13 Q. Isn't it true the ultimate goal of  
14 Philip Morris today is what it's always been and  
15 that is to sell as many cigarettes as possible to  
16 as many smokers as possible and make as much money  
17 as possible for our stockholders and our  
18 employees?  
19 A. The goal of Philip Morris is to be  
20 the most responsible, effective and respected  
21 manufacturer, marketer of consumer products for  
22 adults. Within the context of effective we would  
23 hope to be building market share in whatever  
24 market exists and get a return for our  
25 shareholder.

0138

1 M. Szymanczyk  
2 Q. What do you propose to do, if

3 anything, with this article, State Programs Can  
4 Reduce Tobacco Use, National Cancer Policy Board  
5 Institute of Medicine, National Research Counsel.  
6 First of all, have you read this article?  
7 A. I have scanned that article, yes.  
8 Q. What, if anything, do you propose  
9 to tell the jury about this article or how has  
10 this article assisted you in reaching the opinions  
11 that you're going to express?  
12 A. I believe this is responsive to one  
13 of your questions about any material that we  
14 reviewed.

15 MR. WEBB: I will state on the  
16 record because of the breadth of your  
17 notice, there are things in there he may  
18 have that we'll not address on the witness  
19 stand. I tried to include documents which  
20 he will in any way rely on or support  
21 anything he has to say and because of the  
22 breadth of your notice, there very well  
23 may be things in there he would not  
24 directly refer to or use during his  
25 testimony.

0139

1 M. Szymanczyk  
2 MR. ROSENBLATT: At this point I'm  
3 simply asking him as he sits here today  
4 does he know one way or another whether he  
5 is going to use that article in his  
6 testimony.  
7 A. As I said today, I don't know that  
8 I will, I don't know that I won't either.  
9 Q. Who is Dr. Michael Siegel? Does  
10 that name mean anything to you?  
11 A. I heard the name. I can't give you  
12 the specifics as to where he works. I know that  
13 he has done some research relative to -- I believe  
14 relative to smoking and youth smoking and  
15 advertising, youth smoking prevention advertising.  
16 Q. Do you intend to comment on him or  
17 any of his writings or any of his testimony?  
18 A. It's possible.  
19 MR. ROSENBLATT: This pile is for  
20 me, right?  
21 MR. WEBB: That is yours. That is  
22 your whole pile.  
23 Q. Dear Jodi, who is Jodi Sansone?  
24 A. Jodi works in our youth smoking  
25 prevention.

0140

1 M. Szymanczyk  
2 Q. How old is Jodi?  
3 A. I don't know off the top of my  
4 head. I can't tell you.  
5 Q. Have you ever met Bob Butterworth?  
6 A. No.  
7 Q. Have you ever met Richard Scrudde?  
8 A. No.  
9 Q. Have you ever met Ronald Motley?  
10 A. No.  
11 Q. Have you seen the movie The  
12 Insider?  
13 A. No.

14 MR. WEBB: Have you?  
15 MR. ROSENBLATT: Of course. Of  
16 course I saw it. Do you know what  
17 Mr. Brooks said about that?  
18 MR. WEBB: I do not. Are you going  
19 to tell me?  
20 MR. ROSENBLATT: Do you want me  
21 to?  
22 MR. WEBB: Sure.  
23 MR. ROSENBLATT: It's one of his  
24 very few good lines.  
25 MR. WEBB: In your opinion.

0141

1 M. Szymanczyk  
2 MR. ROSENBLATT: In my opinion. He  
3 had heard it was so defamatory that he  
4 would not pay money to see it, but if it  
5 was being shown free on an airplane he  
6 would watch it.  
7 When I asked him about *veni vidi*  
8 *vici*, not yesterday but some other time,  
9 he laughed and said he sounded like a  
10 Philip Morris culture.  
11 Q. The master settle agreement, have  
12 you read that in its entirety?  
13 A. I read a lot of it. I can't say I  
14 read every word of it. It is a large document.  
15 Q. The reason you're telling us you  
16 entered into the master settlement agreement was  
17 because you were so impressed by the weight of 46  
18 or 50 attorney generals coming against you that  
19 you really felt you had no alternative?  
20 MR. WEBB: I'm going to object.  
21 That's actually not what his answer was.  
22 I object to the form of the question.  
23 A. I'm not sure. I didn't use the  
24 word impressed.  
25 Q. That's what you conveyed to me,

0142

1 M. Szymanczyk  
2 that you were impressed with the highest legal  
3 officers of all these states having one view,  
4 which was very negative to the tobacco industry,  
5 there was definitely a strong motivating factor in  
6 causing you to undertake an obligation of half of  
7 246 billion dollars over the next 25 years?  
8 A. I think what I said, just to be  
9 clear, is that when you have the key law  
10 enforcement officials of virtually all the states  
11 of the union filing suit against you, telling you  
12 that you're running your business the wrong way,  
13 that you shouldn't ignore that and we didn't want  
14 to run our business the wrong way, so we felt it  
15 was appropriate that we determine and understand  
16 from them what they did want. There's also, as I  
17 said, the weight of the matter that litigation and  
18 the impact it could have had on the company. That  
19 was another consideration.  
20 Q. So you never agreed because I  
21 remember reading a lot of media accounts and a lot  
22 of quotes from people in the tobacco industry when  
23 this was being discussed before it was formalized  
24 as a master settle agreement, that it was merely a

25 political move by money hungry attorney generals  
0143

1 M. Szymanczyk  
2 who got together with a whole bunch of politically  
3 connected lawyers to bring the tobacco industry to  
4 its knees and extract from them a huge sum of  
5 money. You never saw it that way, you saw it as  
6 you described it?

7 MR. WEBB: I object to the form of  
8 the question. You may answer.

9 A. I view it as what I stated.

10 Q. Right, not as I just stated?

11 A. I wouldn't view it the way you  
12 stated. I don't think they view it the way you  
13 stated it.

14 Q. It's your view that lawyers like  
15 Motley and Scrudde had the public's interest at  
16 heart?

17 MR. WEBB: I'm going to object to  
18 the form of the question on a number of  
19 grounds, including relevancy, as to what  
20 he thinks about Motley and Scrudde.

21 Q. You can answer.

22 A. I wasn't referring to Motley and  
23 Scrudde.

24 Q. They were the lawyers.

25 A. I don't know about what they were

0144

1 M. Szymanczyk  
2 thinking.

3 Q. Motley and Scrudde were the lawyers  
4 for these attorney generals.

5 MR. WEBB: Object to the form of  
6 the question.

7 A. I have not had any conversations  
8 with them.

9 Q. You have no problem with the fees  
10 they're getting from the tobacco companies?

11 A. I think we're paying them a lot of  
12 money.

13 Q. I do too, but you're doing it  
14 voluntarily, nobody held a gun to your head.

15 MR. WEBB: Object to the form of  
16 the question.

17 Q. That's what they kept saying in the  
18 tobacco litigation, that no one held a gun to the  
19 smoker's head and made you smoke. No one held a  
20 gun to your head and made you sign the settlement  
21 agreement; is that correct?

22 MR. WEBB: Object to the form of  
23 the question.

24 A. We agreed to that agreement, on the  
25 substance of that agreement, including the

0145

1 M. Szymanczyk  
2 penalties that it imposed. I believe the  
3 substance of the agreement was something that was  
4 good for us to do, but certainly the penalty, the  
5 financial penalties, that we paid have been  
6 something that's rather substantial and has had a  
7 negative impact on our business.

8 Q. How has it had a negative impact on  
9 your business?

10 A. Well, I think any time you have a  
11 dramatic drop in your volume performance and you  
12 have to close factories, you have a dramatic,  
13 negative effect on your business.  
14 Q. Going down the list of Exhibit-A.  
15 As I understood it from Mr. Webb, the first number  
16 where you responded with documents was in response  
17 to number four. Let me go down number by number.  
18 Among the documents to be produced,  
19 a current curriculum vitae or resume which lists  
20 all your publications and presentations. You  
21 didn't produce that because it doesn't exist?  
22 A. I don't have one.  
23 Q. You don't have one, okay. Have you  
24 ever authored any publications?  
25 A. No.

0146

1 M. Szymanczyk  
2 Q. Articles?  
3 A. No.  
4 Q. How about letters to the editor,  
5 that kind of thing?  
6 A. No.  
7 Q. A list of all cases where you have  
8 testified. You haven't testified in other cases?  
9 A. I have not.  
10 Q. The same things with respect to  
11 number three, you have not authored such articles?  
12 A. I have not.  
13 Q. So as I now look specifically at  
14 numbers four and five to which you have responded  
15 with documents, you're telling me that as you sit  
16 here today you are not sure of what you're going  
17 to use in your testimony in terms of documents?  
18 MR. WEBB: Documents which he  
19 relied or may rely upon in giving  
20 testimony. Whether he actually will rely  
21 upon them will depend on the vagaries of  
22 your litigation strategy. I didn't mean  
23 that in a negative way. I don't know what  
24 your case is going to be.  
25 MR. ROSENBLATT: Stop it. You know

0147

1 M. Szymanczyk  
2 exactly what my case is going to be.  
3 That's why you have all those motions to  
4 eliminate. I'm going to say Philip Morris  
5 has changed, they've become good guys.  
6 That's what my case is going to be. Your  
7 case is they haven't changed.  
8 Q. Did you produce anything in  
9 response to six? Yes, you did, you say you did.  
10 You didn't produce anything in response to number  
11 seven, any and all reports you prepared. You  
12 didn't prepare any reports?  
13 A. No.  
14 Q. Number eight, any and all reports  
15 which were furnished to you by other experts in  
16 this case?  
17 A. None were.  
18 Q. Have you read any of the trial  
19 testimony from either phase one or phase two of  
20 the Engle litigation?

21 A. No.  
22 Q. Have you read any depositions taken  
23 in connection with the Engle litigation?  
24 A. No.  
25 Q. What specifically have you produced

0148

1 M. Szymanczyk  
2 in response to number nine? You can look through  
3 the pile if you like.

4 MR. WEBB: I will state on the  
5 record I did not know what some of these  
6 words meant like results of analyses,  
7 searches and evaluations, so I think it's  
8 possible that some of those documents in  
9 there may come under number nine. They  
10 also will probably come under four and  
11 five. That's why I gave you the  
12 paragraphs. That was not necessarily the  
13 witness' testimony, that was my statement  
14 to you to show you the paragraphs that I  
15 thought the documents fell under.

16 MR. ROSENBLATT: You stated your  
17 position with respect to ten?

18 MR. WEBB: Yes.

19 Q. Number 11, any and all notes, et  
20 cetera, which you have prepared in this case. You  
21 prepared none?

22 A. I haven't prepared any.

23 Q. Number 12, any and all notes taken  
24 of prepared analysis performed by you or your  
25 agents. They don't exist?

0149

1 M. Szymanczyk

2 A. No.

3 Q. There is no written communications  
4 between you and counsel for the defendants?

5 MR. WEBB: If there is, it would be  
6 under lawyer/client privilege.

7 Q. Number 15, all written  
8 communication between you and any other person,  
9 other than counsel for defendants, regarding this  
10 matter, including, but not limited to, your  
11 opinions?

12 A. There is none.

13 Q. Number 16, all documents upon which  
14 you rely in formulating the methodology by which  
15 you conducted any analysis, test or evaluation in  
16 connection with this matter. They don't exist any  
17 such documents?

18 A. No.

19 Q. Philip Morris is the only tobacco  
20 company you ever worked for, right?

21 A. That's correct.

22 Q. Before you went to work for Philip  
23 Morris, was the tobacco industry something you  
24 ever gave much thought to?

25 A. No.

0150

1 M. Szymanczyk

2 Q. Is it fair to say that when you  
3 were with Proctor & Gamble and before when you  
4 were with that other company, the smaller company,  
5 I forget their name.

6 A. Swift.  
7 Q. You never had any burning desire to  
8 be in the tobacco business or did you?  
9 A. No, that's correct, I didn't.  
10 Q. You did not?  
11 A. Right.  
12 Q. Over the years have you developed  
13 an attitude or a point of view on the whole  
14 smoking and health thing?  
15 A. Not other than the one I have  
16 already described.  
17 Q. But did you have that view before  
18 you came to work for Philip Morris?  
19 A. I did.  
20 Q. Based on what?  
21 A. Just the way I grew up.  
22 Q. Are you now referring to your  
23 statement that smoking is bad for your health?  
24 A. Correct.  
25 Q. Your parents told you that?

0151

1 M. Szymanczyk  
2 A. Correct.  
3 Q. And you believed them?  
4 A. Correct.  
5 Q. So why did you start smoking when  
6 you were in college, obviously you were aware or  
7 whatever, you just did?  
8 A. I had a roommate that smoked  
9 sometimes and so I just would smoke occasionally.  
10 So that's the answer to your question.  
11 Q. When you were in junior high, do  
12 you have a recollection of how many kids smoked?  
13 A. No.  
14 Q. What percentage of kids smoked?  
15 A. No.  
16 Q. Growing up did your parents kind of  
17 always leave the issue of smoking with that  
18 generalization it's bad for you, don't smoke, it's  
19 bad for your health or do you remember any  
20 specifics, what it could do to you, what  
21 particular diseases it could cause?  
22 A. No.  
23 Q. Seventeen, copies of all speeches,  
24 presentations, articles, et cetera. You looked at  
25 number 17 and are you telling me no such documents

0152

1 M. Szymanczyk  
2 exist?  
3 A. No, I haven't done that.  
4 Q. Have you ever appeared on any  
5 television or radio shows discussing issues?  
6 A. No.  
7 Q. Do you believe there's anything in  
8 cigarette smoke that prevents smokers from  
9 reaching and implementing a decision to quit?  
10 A. No, I don't think so.  
11 Q. Does Philip Morris sell cigarettes  
12 in every country in the world?  
13 A. I don't know. Philip Morris  
14 companies?  
15 Q. I understand yours is domestic, but  
16 does any Philip Morris entity, when you look at

17 the whole totality of Philip Morris entities, do  
18 they sell cigarettes in every country in the  
19 world?  
20 A. I don't know.  
21 Q. Your company has nothing to do with  
22 international sales?  
23 A. No, we don't do anything relative  
24 to the operation of that company.  
25 Q. Who is the individual who is in  
0153

1 M. Szymanczyk  
2 charge of international sales?  
3 A. Who's the CEO of that company?  
4 Q. Right.  
5 A. His name is Paul Hendyrs.  
6 Q. Where is he based?  
7 A. I believe his office is Rye brook.  
8 Q. New York?  
9 A. Rye Brook, New York.  
10 Q. When Philip Morris bought the brand  
11 of cigarettes from Liggett, Philip Morris removed  
12 the warnings that were on packages of  
13 Chesterfields, for example, that smoking is  
14 addictive, isn't that true?  
15 A. That is true.  
16 Q. Why?  
17 A. A couple of reasons why. I believe  
18 I mentioned this earlier. One reason is there is  
19 a federal labeling act which lays out specifically  
20 what warning labels go on a cigarette pack, how  
21 they go on, what the location is, what the  
22 rotation procedure is and that rotation procedure  
23 takes up all 365 days of the year and that's a  
24 prescribed regulation that we're obligated to  
25 comply with and do. So that is not one of the  
0154

1 M. Szymanczyk  
2 warnings that has been developed by Congress at  
3 this point to go on a pack.  
4 The second reason is that we  
5 committed to some members of Congress in 1997 that  
6 there would be but one voice on the subject of  
7 smoking and health and that would be the  
8 government supported by the public health  
9 community. So that is not a warning that the  
10 government and public community has called us  
11 around to provide on a cigarette pack, so we would  
12 be in conflict with that policy.  
13 So those are really the two  
14 reasons, we followed those two principles and  
15 tried to do what the government wanted us to do.  
16 Q. When you purchased the cigarettes,  
17 the brand from Mr. Lebow and Liggett, did you make  
18 it clear that you were going to do that, remove  
19 that warning?  
20 A. No, that was not a subject of  
21 discussion.  
22 Q. Was Mr. Bible actively involved in  
23 negotiating the master settlement agreement as far  
24 as you know?  
25 A. I don't know for sure. I would  
0155

1 M. Szymanczyk



2 assume he had some role.  
3 Q. Are you aware that he received a  
4 bonus for negotiating that agreement?  
5 A. I'm not aware of what his specific  
6 compensation is.  
7 Q. I'm not asking you about the amount  
8 of the bonus, I'm simply asking you are you aware  
9 that he received a bonus.  
10 A. No.  
11 Q. You're not aware?  
12 A. No.  
13 Q. Okay.  
14 MR. WEBB: Can we take a five  
15 minute rest room break?  
16 MR. ROSENBLATT: Sure.  
17 (A recess was taken.)  
18 Q. What is the Virginia Slims book of  
19 days?  
20 A. It's a calendar.  
21 Q. It's a calendar?  
22 A. Yes.  
23 Q. How long have you been putting out  
24 that calendar about?  
25 A. I don't know. I think it precedes

0156

1 M. Szymanczyk  
2 me.  
3 Q. Does Virginia Slims still use the  
4 theme "it's a woman thing"?  
5 A. No.  
6 Q. Why is that, it wasn't successful,  
7 you didn't like it?  
8 A. Changed the advertising campaign.  
9 Q. When did you discontinue that,  
10 "it's a woman thing"?  
11 A. I think it was last year if I  
12 remember right.  
13 Q. What's happening with the Accord  
14 these days?  
15 A. We have expanded it into 200 stores  
16 in the Richmond market and we continue to have  
17 some product development changes that are in  
18 research on the product and have developed,  
19 continue to develop it towards trying to take it  
20 to the broader marketplace.  
21 Q. The only city then in the country  
22 in which Accord is being sold is in Richmond?  
23 A. In this country, yes.  
24 Q. How about other countries?  
25 A. It's in Osaka, Japan.

0157

1 M. Szymanczyk  
2 Q. Those are the two places?  
3 A. No, it's still in the development  
4 mode so it's in those places as we finish our work  
5 on the product.  
6 Q. What remains to be done?  
7 A. Well, it was put into those markets  
8 so that we could actually get purchase experience  
9 from consumers and then get information back from  
10 them as to how they felt about the product. In  
11 the course of that we have learned things about  
12 the product, its flavor, how the lighter performs,

13 that is insight to allow us to bring it up to a  
14 level it might have a chance of being successful  
15 in the marketplace.

16 We have also continued to work on  
17 the science on the product in an effort to develop  
18 it properly and we also have begun discussions,  
19 had some discussions with the government and the  
20 FDA relative to the product. So it's still in the  
21 development process.

22 Q. Was Accord test marketed in cities  
23 other than Richmond and Osaka over the years?

24 A. Well, I wouldn't say that it's ever  
25 been test marketed in the sense of running a test

0158

1 M. Szymanczyk  
2 market as a precursor. It's in a large scale  
3 consumer test in the development of the product.

4 No, it has not been in any other  
5 place than those two.

6 Q. What do you see as the future of  
7 Accord?

8 A. I think the future of Accord as a  
9 product is that we'll be expanding it to the  
10 marketplace. That's my expectation of what will  
11 occur with the product once we've completed our  
12 current development process or the product  
13 integrity testing that has to go with that and  
14 work with the government to decide how to  
15 communicate to the consumer relative to the  
16 product.

17 Q. Why do you have to work with the  
18 government on Accord? What role does the  
19 government have?

20 A. Because Accord as a product, as a  
21 specific product, reduces some constituencies in  
22 smoke that have been deemed to be harmful by the  
23 public health community, so to the degree anything  
24 is going to be said about those, we need to  
25 understand how the public health authorities and

0159

1 M. Szymanczyk  
2 the government wants to view that.

3 Q. Does Accord burn tobacco or does it  
4 heat tobacco?

5 A. It heats tobacco.

6 Q. Does Philip Morris have any  
7 comparable product to Accord in the sense a  
8 product that does not burn tobacco?

9 A. Another product that heats  
10 tobacco?

11 Q. Right.

12 A. No.

13 Q. Do you consider Accord to be a  
14 safer cigarette than your other brands that do in  
15 fact burn tobacco?

16 A. I can't make that distinction for  
17 you at this point.

18 Q. Does the phrase and reference to  
19 the master settlement agreement renegade clause,  
20 what does that mean to you, if anything?

21 A. I believe renegade clause refers to  
22 some elements of the master settlement agreement  
23 related to people who aren't a participant.

24 Q. Has Philip Morris had to borrow  
25 money to meet its obligation thus far under the  
0160

1 M. Szymanczyk  
2 master settlement agreement?

3 A. Philip Morris U.S.A. has not  
4 borrowed money for that purpose.

5 Q. Do you as the CEO of Philip Morris  
6 Inc. believe that you owe an apology to the  
7 American people and the residents of Florida for  
8 the fraud and misrepresentation and deceit of your  
9 company over the past several decades?

10 MR. WEBB: Object to the form of  
11 the question.

12 A. I think having had the company  
13 personnel appear as witnesses in the Engle trial  
14 across the last two years and testify on the  
15 company's behalf and defending the company against  
16 the allegations that have been made against it and  
17 having had that trial take place over the past two  
18 years and then having had a jury find against us  
19 would cause me to view now making an apology at  
20 this point as a pretty insincere thing to do.

21 My intention as a CEO of the  
22 company and a relatively new CEO is to accomplish  
23 the missions that I laid out for the company. I  
24 believe that's the best thing I could do for the  
25 American public and for the citizens of Florida  
0161

1 M. Szymanczyk  
2 and that's what I intend on doing.

3 Q. Do you understand that probably the  
4 main purpose of your testimony before this jury in  
5 Miami is going to be to attempt to persuade the  
6 jury as to why it would be inappropriate or wrong  
7 to level against Philip Morris a large punitive  
8 damage award? In other words, the purpose of your  
9 testimony is to mitigate the amount of punitive  
10 damages awarded?

11 All I'm asking you at this point is  
12 do you understand that that's really the bottom  
13 line of your testimony from the standpoint of your  
14 lawyers?

15 MR. WEBB: I object to the form of  
16 the question. You may answer.

17 A. I guess maybe that's an outcome,  
18 but my objective and purpose for appearing in  
19 Florida is to explain to this jury how I'm running  
20 this business today and what we're doing so they  
21 could consider that as they have to make a  
22 determination on the subject.

23 Q. That's really been your whole focus  
24 because as I have understood your testimony and  
25 I'm not quarreling with that focus, I just want to  
0162

1 M. Szymanczyk  
2 the clarify in my own mind, your entire focus is  
3 going to be on the manner in which you're running  
4 the business since you have been elevated to the  
5 position of CEO and it's not been your purpose to  
6 study at all what went on in the past and to  
7 compare the past behavior with the present  
8 behavior?

9 A. I think that's a fair statement.  
10 Q. As I've understood your testimony,  
11 one of the reasons why you think that it would be  
12 insincere and inappropriate to offer an apology is  
13 because you recognize that throughout the Engle  
14 trial, both phases, which have preceded the  
15 upcoming phrase on punitive damages, the Philip  
16 Morris people in terms of witnesses they  
17 presented, they thought they were right?  
18 A. I believe that's correct, yes.  
19 Q. Obviously we all have to recognize  
20 that the jury reached the verdict it reached.  
21 A. That's correct.  
22 Q. But you don't have to agree with  
23 it, you recognize it happened, it's a fact.  
24 A. You have to certainly respect the  
25 fact that that's what the jury decided,

0163

1 M. Szymanczyk  
2 absolutely.  
3 MR. ROSENBLATT: That's it.  
4 MR. WEBB: Anyone else have  
5 questions?  
6 (TIME NOTED: 3:00 P.M.)  
7  
8

9 \_\_\_\_\_  
10 MICHAEL SZYMANCZYK

11 Subscribed and sworn to  
12 before me this \_\_\_\_\_ day  
13 of \_\_\_\_\_ 2000.  
14

15 \_\_\_\_\_  
16 NOTARY PUBLIC  
17  
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19  
20  
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2 C E R T I F I C A T E  
3 STATE OF NEW YORK )  
4 ) ss:  
5 COUNTY OF NEW YORK )  
6

7 I, BRENDA COCHRANE, Shorthand  
8 Reporter and Notary Public within and for the  
9 State of New York, do hereby certify:

10 That, MICHAEL SZYMANCZYK, the  
11 witness whose Deposition was held on May 10, 2000,  
12 as hereinbefore set forth, was duly sworn by me,  
13 and that this transcript of such examination is a  
14 true and accurate record of the testimony given by  
15 such witness.

16 I further certify that I am not  
17 related to any of the parties to this action by  
18 blood or marriage, and that I am in no way  
19 interested in the outcome of this matter

20                   IN WITNESS WHEREOF, I have hereunto  
21 set my hand this 12th day of May 2000.

22

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BRENDA COCHRANE